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**Stan Wisniewski**  
Director

**Kerry Gottlieb**  
Chief Deputy

June 3, 2004

TO: Small Craft Harbor Commission  
FROM: *Kerry Gottlieb Silverstein*  
Stan Wisniewski, Director *for*  
SUBJECT: **COMMISSION AGENDA – JUNE 9, 2004**

Enclosed is the June 9, 2004 meeting agenda, together with the minutes from your meetings of April 21, 2004 and May 12, 2004. Also enclosed are reports related to agenda items 3a, 3b, 5a, 5b, 5c and 6a.

Please call me if you have any questions or need additional information.

SW:tlh  
Enclosures



Stan Wisniewski  
Director

Kerry Gottlieb  
Chief Deputy

**AGENDA**  
**SMALL CRAFT HARBOR COMMISSION MEETING**  
**JUNE 9, 2004**  
**9:30 a.m.**  
**BURTON W. CHACE PARK COMMUNITY BUILDING**  
**13650 MINDANAO WAY**  
**MARINA DEL REY, CA. 90292**

1. Call to Order and Action on Absences
2. Approval of Minutes: Meetings of April 21, 2004 and May 12, 2004
3. **REGULAR REPORTS** (DISCUSS REPORTS)

- a. Marina Sheriff
  - Crime Statistics
  - Enforcement of Seaworthy & Liveaboard Sections of the Harbor Ordinance

- b. Marina del Rey and Beach Special Events

4. **OLD BUSINESS**

None

5. **NEW BUSINESS**

- a. Approve the Release of Request for Proposals for Improvements to Parcel 83S in Marina del Rey (RECOMMEND TO BOARD)
- b. Consent to Assignment of Leasehold Interest and Amendment to Lease – Parcel 10R (Neptune Marina) Marina del Rey (RECOMMEND TO BOARD)
- c. Joint Recommendation of the Chief Administrative Officer and Director of the Department of Beaches and Harbors to Approve and Authorize Execution of Amendment to Second Amended and Restated Lease No. 55624 – Parcel 125R (Marina City Club) Marina del Rey (RECOMMEND TO BOARD)

6. **STAFF REPORTS**

(DISCUSS REPORTS)

- a. Ongoing Activities
  - Board Actions on Items Relating to Marina del Rey
  - Design Control Board Minutes
  - Public Comment Follow-Up

7. **COMMUNICATION FROM THE PUBLIC**

8. **ADJOURNMENT**

**PLEASE NOTE:**

1. The Los Angeles County Board of Supervisors adopted Chapter 2.160 of the Los Angeles Code (Ord. 93-0031 § 2 (part), 1993), relating to lobbyists. Any person who seeks support or endorsement from the Small Craft Harbor Commission on any official action must certify that he/she is familiar with the requirements of this ordinance. A copy of the ordinance can be provided prior to the meeting and certification is to be made before or at the meeting.
2. The agenda will be posted on the Internet and displayed at the following locations at least 72 hours preceding the meeting date:

Department of Beaches and Harbors' Website Address: <http://beaches.co.la.ca.us>

Department of Beaches and Harbors  
Administration Building  
13837 Fiji Way  
Marina del Rey, CA 90292

MdR Visitors & Information Center  
4701 Admiralty Way  
Marina del Rey, CA 90292

Burton Chace Park Community Room  
13650 Mindanao Way  
Marina del Rey, CA 90292

Lloyd Taber-Marina del Rey Library  
4533 Admiralty Way  
Marina del Rey, CA 90292

Si necesita asistencia para interpretar esta informacion llame al (310) 305-9546.

Small Craft Harbor Commission  
Meeting of April 21, 2004  
Minutes

Commissioners Present

Harley Searcy, Chairman  
Carole Stevens, Vice-Chairperson  
Russ Lesser

Department  
of Beaches &  
Harbors:

Stan Wisniewski, Director  
Roger Moliere, Deputy Director, Asset Mgmt & Planning Bureau  
Joe Chesler, Chief, Planning Division  
Dusty Crane, Chief, Community & Marketing Services Division

Other County  
Departments:

Tom Faughnan, County Counsel  
Lt. Greg Nelson, Sheriff's Department  
Deputy Paul Carvalho, Sheriff's Department

Also Present:

Beverly Moore, Executive Director, MdR Convention & Visitors  
Bureau

Excused Absences

Joe Crail

**1. CALL TO ORDER & ACTION ON ABSENCES**

Chairman Searcy called the meeting of the Los Angeles County Small Craft Harbor Commission to order at 1:30 p.m. in the Burton W. Chace Park Community Room, Marina del Rey.

*Vice-Chairperson Stevens moved and Commissioner Lesser seconded a motion to excuse Commissioner Crail from today's meeting. The motion passed unanimously.*

**2. APPROVAL OF MINUTES**

Ms. Carla Andrus requested that the Commission not approve the March 10, 2004 minutes. She explained the reason for her request is:

The summary comments of February 10 on the failed workshop have not been adequately addressed. Not only were six important topics crowded into a workshop after a long meeting, but the public was effectively divided by adding the pressing and sensitive issues of Kingswood's residents. They were invited to ask questions of the Archstone representatives and none of it is a matter of record. Apparently, according to the tenants, promises were made at that after-meeting to appease their anger and fears. I would like to know what was represented at that meeting. Further, the workshops were not introduced and no record was made of the verbal questions and comments offered. Mr. Wisniewski simply said good questions were offered, but too few and it was not the input for which he had hoped. I had some questions for EDAW representatives and I went to the workshop believing that these questions, ideas and comments would be addressed. We need to reschedule these workshops and make the questions, ideas and comments a matter of record. We need to appreciate the importance of these topics by putting them on next month's agenda with an introduction and status report. It is very disappointing not to see even one of these topics on this agenda. What happened? Was it all for show? To say we had a workshop is so much more expedient than really having one.

Chairman Searcy asked Mr. Wisniewski whether he wanted to respond to Ms. Andrus' comments. Mr. Wisniewski responded that he didn't hear Ms. Andrus state that the minutes are inaccurate. Mr. Wisniewski explained that the minutes are a historical record of the meeting's proceedings and he encourages their approval if the Commission believes them to be accurate.

Chairman Searcy said that it sounds as though, according to Ms. Andrus, discussions between Archstone representatives and Kingswood tenants occurred after the February meeting had adjourned. Chairman Searcy said that, in his opinion, such discussions are not under the Commission's purview and since the Commissioners were not a party to them, he doesn't understand why the discussions would be included in the minutes.

In response to Ms. Andrus' comments that workshops "were not introduced" at the February meeting, Chairman Searcy informed her that he announced at the February meeting that the workstations would be available to the public.

Chairman Searcy asked Mr. Wisniewski whether any of the questions and/or comments posed at the workstations should be an agenda topic at the May meeting. Mr. Wisniewski responded that he didn't believe so since a summary of the public's written comments and the public's completed Question/Comment forms were already provided to the Commission at the March meeting. Copies of these documents were placed on the public information table at the March meeting.

Vice-Chairperson Stevens suggested that members of the public contact the Commission Secretary if they wish to purchase a tape of the February meeting.

Commissioner Lesser noted that the heading of the March 10 minutes should be changed from "Evening Meeting of March 10, 2004" to "Meeting of March 10, 2004 since the March meeting was a regularly scheduled 9:30 a.m. meeting.

*Vice-Chairperson Stevens moved and Commissioner Lesser seconded a motion to approve the March 10, 2004 minutes as corrected. The motion passed unanimously.*

### 3. REGULAR REPORTS

#### a. Marina Sheriff's Department Report

##### -- Crime Statistics

Lt. Greg Nelson introduced himself as the new Harbor Master who replaced Lt. Edmonds. Lt. Nelson noted that there isn't a spike in any one area of crime. He commented that a homicide recently occurred in the Ladera Heights area and is being investigated.

##### -- Enforcement of Seaworthy & Liveaboard Sections of the Harbor Ordinance

Deputy Carvalho reported that no new Notices to Comply were issued in March, which can be attributed to the number of vessels already at the docks. There are now 19-20 vessels. He said that there probably won't be any new Notices to Comply issued until the disposal of the 19-20 vessels that are currently at the Sheriff's docks. Staff, however, would follow up on the notices that were already issued. He said that the Department is in the process of obtaining funds to dispose of the vessels and he anticipates that approximately half of them would be disposed of within the next month.

Vice-Chairperson Stevens asked Deputy Carvalho whether it is true that the Sheriff's Department is facing a 30% budget cut. Deputy Carvalho responded that he assumes there will be a reduction, however, he isn't sure of its extent. Vice-Chairperson Stevens asked whether Deputy Carvalho knows how the budget cuts would affect the Marina Sheriff's station. Deputy Carvalho responded that he doesn't know, however, he assumes the station would remain open since he hasn't heard anything to the contrary.

**b. Marina del Rey and Beach Special Events**

Mr. Wisniewski reported that the Marina del Rey Outdoor Adventures' Harbor Kayaking Program is a fun activity that's scheduled on Saturdays during April, May, June, September and October. The Special Events report also includes the Del Rey Yacht Club's Open House scheduled for April 17-18 and the California Yacht Club Sunset Series scheduled for April 21-September 1. Mr. Wisniewski noted that the Sunset Series is a remarkable sight. The Santa Monica Bay Halibut Derby is scheduled for April 17-18 and the Fisherman's Village Weekend Concert Series will occur on Sundays, April 18 and April 25. The report also includes beach activities.

**4. OLD BUSINESS**

**a. Enforcement of Harbor Ordinance - Liveaboards**

Mr. Wisniewski informed the Commission that this item is a follow up to Chairman Searcy's question from the March meeting regarding whether, under the Harbor Ordinance, the Department could require a different degree of sustainable proof than the lessee and request the lessee to pay rent to the Department for illegal liveaboards. Mr. Faughnan informed the Commission that the Department does not require a different degree of sustainable proof than the lessee. The ordinance governs whether someone is a liveboard and requires that a person remain more than three days within a given week. This is what the lessee looks at to determine whether or not to charge rent. The lessee is obligated to collect rents and the Department has been working with the lessees to improve the monitoring methods for liveaboards.

Vice-Chairperson Stevens said that Dolphin Marina posts signage on every gate to every dock on Basin C and Basin D stating only liveaboards with permits are allowed. She said that the other lessees with docks should be encouraged to do the same since this method is very effective. Mr. Wisniewski said that he would discuss Vice-Chairperson Stevens' suggestion with the lessees at the next Lessee's Association meeting.

Mr. Wisniewski commented that he personally would not find Dolphin Marina's posting method particularly effective since liveaboards are violating their slip rental agreement and a sign on a gate entrance would not make any difference or deter them. Mr. Wisniewski said that, perhaps, it would be effective for the signage to identify the slip numbers of authorized liveaboards on a particular gangway. He said that he would pass the suggestion onto the lessees.

Chairman Searcy opened the floor to public comment.

Ms. Andrus said that Mr. Wisniewski's comment is another erosion of the boaters' rights in the Marina. She informed the Commission about a letter in the April 9 issue of the Argonaut regarding the unfair enforcement of seaworthy ordinances in terms of liveaboards, weekenders and liveaboards. Ms. Andrus read a prepared statement:

All boats should be seaworthy and enforcement of this ordinance should be uniform. In this letter [in the Argonaut], I read with concern that the writer's marina has a lease agreement that does not distinguish a boater's right to stay on his or her boat for more than three consecutive days. This has always been the policy and rightfully so. Boaters should have the right to stay on their boats. They own them. They insure them with the anchorage. They pay for the anchorage and a boat is to be enjoyed. The small craft harbor was created for such uses. These marinas should not be able to dictate which days you can use your boat. That is another erosion of the public's benefit, to mitigate the management problems. Instead, the marinas should consider more effective and less invasive management tools, such as electronic parking and gate passes would be better tools and valet parking to help the marinas manage their problems. Bar Harbor

has attempted regulation with a memo suggesting that if you don't have a liveaboard parking sticker you can only legitimately park in this marina Friday, Saturday and Sunday or be towed away. To hear Mr. Moliere complain that it's difficult to manage the hideaboard issue because of the proof you have to have in a court of law is not an excuse. The boaters need protection for their interest in this public Marina and you have a burden of proof. It is really a problem of management. These problems come with the territory. Some of the marinas are able to deal with these issues and if the lessees cannot manage their marinas, perhaps, they are in the wrong business. So, instead of managing the marinas we make more ordinances to erode the rights of the boaters. I hope that's not the agenda today, as Stan just indicated, putting more burden on the liveaboards. It's ridiculous. Let the managers manage the docks. We're not dockmasters. Let the dockmasters handle it. Let them do it through parking passes or electronic passes. You can easily see who is coming in and out, what days they are there. It's all done electronically. The Department has already been successful in eliminating hundreds of small boat slips and boating opportunities in favor of yachts and parking for apartment units. This has created more hideaboard problems. Mr. Searcy, I think your suggestion has the strongest language for the offending marinas. That would be that you legitimize those people who would gladly pay the extra liveaboard fee and I believe that the Department has estimated a 2% hideaboard figure. That's lost revenue and with the electronic devices you could start collecting that revenue.

**b. Marina del Rey Slip Replacement - Status**

Mr. Moliere reported on a follow up to the Commission's request in March that staff report on the number of slips that were replaced or soon to be replaced in the Marina. He informed the Commission that the Department has had an aggressive program to encourage the replacement of boat slips, many of which are reaching the end of their useful life. Staff provided a report to the Commission, which includes a table that identifies the number of slips that have already been replaced and those that will be replaced within the next few years. Mr. Moliere explained that the table shows approximately 1,000 slips have been replaced and over the next 4-5 years the Department has a high degree of assurance that a total of 3,000 plus slips will be replaced, which constitutes approximately 65% of the Marina's inventory. Mr. Moliere said that the Department believes that even more slips will be replaced because the lessees see clearly that the cost of ongoing maintenance on older docks starts to overwhelm the cost of new docks.

Commissioner Lesser complimented staff on its excellent report. He asked whether anything could be done to expedite the process of slip replacement of the remaining 35% inventory. Mr. Wisniewski responded that improvements are being made in this regard. He said that he recently signed a letter for submission to the Board of Supervisors for a new lease inspection service contract that will increase the number of inspectors to two people. This additional staff is needed to stay on top of the situation because of the aging docks that remain in place. As these docks get older the number of deficiencies grow and there is an increased need for staff. Mr. Wisniewski said that a good strong inspection program would help to ensure that lessees ultimately see the economic benefits of replacing rather than repairing old docks.

Chairman Searcy noted that the staff report doesn't indicate the size of the slips that were replaced and will be replaced in the future. He requested staff to provide this information at the May meeting. Mr. Moliere responded that staff would comply with this request.

Chairman Searcy opened the floor to public comment.

Mr. John Davis, speaking on his own behalf, said:

First of all, I would like to bring up the falsehood that Mr. Moliere has presented that there are lease extensions. These are new leases crusading as lease extensions. We all know it and it's disingenuous and dishonest to say to the public that these are lease

extensions. They are leases that supersede existing leases. Secondly, the reason these docks need to be replaced is because the Department of Beaches and Harbors has purposely avoided issuing notices of default, letting these docks deteriorate to the point where they have caused injury and potential death in the recent past. The fact that the dock inspector is no way qualified to inspect such docks and the fact that the County of Los Angeles Department of Beaches and Harbors has no way to verify that the lessees received their inspection reports and the fact that the Director has continually over the past several years failed to issue notices of default. You can walk any of the docks and see the dock deficiencies. The Director fails to issue notices of default. There is no way that the Department has to determine whether the lessees have even received the reports by Beaches and Harbors. Mr. Moliere pointed this out when I requested some of the dock inspection reports for Deauville Marina. I asked, 'how do you verify?' There is no verification that the lessees received the inspection reports. Finally, you need to very much consider the fact that if you're going to issue any type of proposals to put docks on the federal easement you would have to get federal permits and the Coastal Commission would have to swear an affidavit saying that these projects were in compliance with the Coastal Act and given the fact that these are excluded lands the Coastal Commission has no regulatory jurisdiction to issue permits for docks in the main channel. Finally, the Rivers and Harbors Act of 1945 governs the Rivers and Harbors Act of 1954, which approved the inlet at Playa del Rey. The 1945 Rivers and Harbors Act says that the governor or his delegates would be the liaison between the United States and the state of California. The question is, has the governor delegated that authority to the Los Angeles County Department of Beaches and Harbors and is the Los Angeles County Department of Beaches and Harbors seeking millions of dollars from the U.S. government under the 1954 authorization?

Mr. Robert Varney, a boater, informed the Commission that the people who are waiting for slips and those people who were displaced when the slips were removed are not given any consideration and don't have the ability to reintegrate into the society of Marina del Rey. He said that he had a slip for a year until his slip was condemned along with several other slips. Mr. Varney said that he then tried to rent a transient slip at Chace Park and was told by staff that he could not remain there because he has a marina eviction.

Chairman Searcy requested a response from Mr. Wisniewski on Mr. Varney's allegation that Chace Park does not rent to people who are evicted from slips in the Marina. Mr. Wisniewski asked Mr. Varney when he lost his slip and what was the size of his slip. Mr. Varney responded that he lost his slip approximately 3 1/2 months ago and it was a 25' slip.

Mr. Wisniewski informed the Commission that there are many vacant 25' slips, however, Mr. Varney tries to use the transient docks as his permanent slip location. Chace Park employees have informed Mr. Varney that this practice isn't allowed. Mr. Wisniewski added that Mr. Varney has visited the Beaches and Harbors' administration building to discuss his concerns and he took up a lot of staff time. The last time that Mr. Varney came to the administration building Mr. Wisniewski suggested that he submit his concerns in writing so that staff could respond. Mr. Varney became belligerent and began raising his voice and becoming disruptive. Mr. Wisniewski said that, as a result, Mr. Varney is no longer welcome at the Department's headquarters.

Chairman Searcy asked whether there are 25' slips available for rent. Mr. Wisniewski responded that there are such slips for rent and Mr. Moliere can provide Mr. Varney with a list after today's meeting. Chairman Searcy suggested that Mr. Varney and other members of the public speak to Mr. Moliere after the meeting if they are interested in obtaining the list of docks that have 25' boat slips available.

Mr. Wisniewski commented that Mr. Moliere could provide the list, however, Beaches and Harbors' staff don't determine whether Mr. Varney's or anyone else's boat is seaworthy. Mr. Moliere added that the public should also be aware that credit worthiness and past history of tenancy are important considerations when leasing a slip.

Chairman Searcy informed members of the public that if they are turned down because of their credit history they have the right to obtain a copy of the credit report and challenge it. Chairman Searcy added that if an individual is turned down for any reason, the person should get the reason(s) in writing and if the dock's staff refuses to put the reason in writing, the Commission should be informed of it.

Mr. Varney said that he's been on a waiting list for slips throughout the Marina and learned that brokers obtained slips ahead of him. He also was turned down for having an old boat that was dated before 1974 and the anchorages would not accept boats that were older than 1975. Mr. Varney said that he received the rejection in writing, which he has with him today.

In response to Mr. Wisniewski's comment that Mr. Varney behaved inappropriately at the Department's administration building, Mr. Varney said that he visited the office and had a calm demeanor, however, when he was speaking calmly with two staff people, Mr. Wisniewski began screaming at him and asked when Mr. Varney was going to stop wasting staff time. Mr. Varney commented to the Commission that this was the only time that Mr. Wisniewski has ever spoken to him on the three occasions that he has encountered Mr. Wisniewski.

Ms. Andrus said that the replacement of slips speaks volumes about the degraded conditions of the Marina. She commented that when Chairman Searcy first began serving on the Commission, he showed interest in the spirit and soul of Marina del Rey. However, Chairman Searcy now behaves as though he feels everything has become too repetitive. Ms. Andrus informed the Commission that the issues she is bringing up today would continue to be brought up because boaters and tenants are being hurt and their lives are being turned upside down. She said that the Commissioners and Department staff don't realize the anguish and fear that residents are experiencing by the Department not enforcing maintenance issues and now the Department is trying to balance everything on the backs of the boaters and residents by eroding their rights and ignoring their grievances.

Ms. Andrus also commented that the Commissioners were supposed to do a dock walk, however, a walk alone won't be enough now because the docks are so deteriorated that the Commissioners will have to put on diving suits to explore them. She added that staff isn't counting the slips correctly. For example, with the end ties, "they'll" tell you that three small boats can be fitted on them and the slips are counted as three small slips instead of counting them as one large slip. If a small boater wants to use the end tie, he/she will have to pay the whole slip fee. She said that the Department should be fairer in its representation of the slip numbers.

Further, Ms. Andrus said that she also would like to see improvement in the way the public is treated. She said that the February 10 workshops exemplified the Department's desire to distance itself from the public and to push the public aside.

Chairman Searcy addressed Ms. Andrus' comments. He said that many facilities in the Marina are quite old and many residents, such as the Kingswood tenants, have gone without improvements or rent increases to their complexes for years. For years, the tenants had the benefit of not having to pay increased rents, however, they also had to live with no improvements to their complex. He commented that it is unfortunate that some people will be displaced during building renovations, but it cannot be avoided. There are efforts to make things as harmonious as possible for residents, but not everyone will be happy.

Chairman Searcy also informed Ms. Andrus that he remains a dedicated commissioner and is doing the best job that he can. He said that it's a two-way street as far as the Commission's interaction with the public is concerned. The Commission has a difficult job. There are members of the public who don't want any changes in the Marina and some of the public don't want certain members of the population to have access to the Marina's facilities. Chairman Searcy emphasized that the Marina is a part of Los Angeles County and is open to all of its residents.

Chairman Searcy added that people have also questioned jurisdictional issues concerning the County's right to operate the Marina or develop in the Marina. In response to these concerns, County Counsel staff spent a lot of time researching the matter and, ultimately, developed a well-reasoned legal brief. However, the public expressed dissatisfaction with County Counsel's response. Chairman Searcy emphasized that change is difficult, but it has to happen and improvements have to be made. He reiterated that not everyone is going to be happy with all of the development occurring in the Marina, but Commission members are doing the best job that they can and will continue to do so.

Mr. Brian Harr suggested that when slips at the lessees' docks remain vacant for a certain length of time the lessee could be mandated to report the vacancy to the Department so that Chace Park will have the opportunity to rent the slips, perhaps on a daily or weekly basis, to its overflow transient tenants. Chairman Searcy informed Mr. Harr that the idea doesn't sound half bad as far as making slips available on a rolling basis. However, it would have to be voluntary and something that the lessees want to do.

Mr. Wisniewski said that the Department has spoken to lessees about offering, on a cooperative basis, their vacant slips during the summer months to Chace Park tenants on occasions when Chace Park docks are full. This has worked in the past, but the lessees did it on a volunteer basis. Mr. Wisniewski added that one of the reasons there are plans to expand Chace Park is to bring more slip space under County control so that additional transient facilities could be added if needed. He said that negotiations have already begun with lessees to build transient facilities at their docks.

Mr. Wisniewski commented that the biggest demand is for slips to accommodate boats 35' and above. These slips are very few and far between. There is a surplus of boat slips below 30'. The Department has placed a moratorium on converting more slips that are below 30' to the larger sizes because of the concern that, even though there is a 7-8% vacancy factor for small slips, this vacancy factor might go away tomorrow.

Mr. Harr said that he previously made his suggestion to Paul Wong and Mr. Wong pointed out that the problem is that if someone uses a lessee's slip on a transient basis, it might be hard for the lessee to get the person to leave. Mr. Harr said that this situation would not occur if the slip was rented on a night-to-night basis, like a hotel, and the tenant knew beforehand that he would have to leave.

Commissioner Lesser requested staff to estimate the number of people who come to Chace Park to rent a transient slip and are turned away. Mr. Wisniewski responded that he didn't have this figure but could obtain it. He explained that the primary issue at the transient docks is the turning away of the Ballona Creek boaters who cannot find permanent moorage in Marina del Rey. These boaters bring their vessels to Chace Park's 4-hour dock and try to leave them there on an ongoing basis.

Mr. Wisniewski said that there is a need for additional transient facilities, particularly for the large vessels for which the Marina typically does not have room. He said that the Department is currently negotiating with the lessees concerning these facilities. Mr. Wisniewski added that he would remind the lessees of the voluntary program to make transient docks available. This program is particularly useful during the summer months when special events are scheduled at Chace Park and overflow docks are needed.

Commissioner Lesser commented that a lot of the original leases did not have the teeth in them that the new leases have as far as maintenance requirements is concerned and this caused a lot of problems, which are currently being corrected. He said that the new leases are far more effective and improve the way maintenance problems are handled. Hiring additional inspectors will help expedite the process of refurbishing the docks that aren't going to be replaced right away and, hopefully, over time, the entire Marina will have new docks.

Mr. Wisniewski commented that people should not lose sight of the fact that 65% of the slip inventory has been replaced or is in the process of being replaced.

5. **NEW BUSINESS**

a. **Concession on County-Owned or Operated Beaches and Burton Chace Park**

Mr. Wisniewski said that the Department is requesting the Commission to recommend Board approval of the Café Lorelei proposal to provide concession services at Burton Chace Park. He said the Beach Commission has already given its recommendation for the beach concession proposals.

Mr. Wisniewski asked Mr. Paul Wong, Chief, Asset Management Division, for the number of bids the Department received for the Chace Park concession. Mr. Wong responded that three bids were received. Mr. Wisniewski commented that the recommended concessionaire also operates a café next to the health facility at Holiday Harbor and she is a delightful and energetic person.

Mr. Wisniewski said that the concession agreement is for a five-year period. In the past, the contract was for a two-year period and maintenance was the County's responsibility. Through Paul Wong's and his staff's efforts, the contract period was extended to five-years, maintenance of the facility is now the responsibility of the concessionaire and the County's gross revenues is estimated to increase by \$92,000 annually.

Chairman Searcy opened the floor to public comment.

Ms. Carla Andrus said that she shares Mr. Wisniewski's enthusiasm for Café Lorelei and commented that it's good that a local entity was awarded the bid. She said that Café Mermaid is a local business that is connected to the community and the concessionaire has sensitivity to the community's needs and desires. The café has a warm and inviting atmosphere as well as an interesting and exciting menu.

Mr. John Davis said:

This is clearly a formerly submerged land of the state of California. Director Victor Adorian sent a letter to the State Lands Commission, which I submitted to this Commission at the night meeting. It was a letter from Victor Adorian to the State Lands Commission stating that we all know that Marina del Rey was dry land and that would you please give us a blanket letter stating that these were not public trust lands. Clearly from all of the U.S. Army maps and U.S. geological survey maps and several old surveys, these were formerly submerged lands. Under the Public Resource Code, the Lands Commission is required to own all formerly submerged or currently submerged lands. So, my question is, what right does the County have to issue a lease on lands that should be owned by the Lands Commission? That's my first question. Secondly, there is no indication that I see in this report of how many square feet would be given to...a lessee or concessionaire. We don't see any amount of space...is it a way for the County to get its nose under the door and build a building, etc.? Where is the square footage...or do we even know how much square footage there is? That concludes my testimony and I'm very much anxious to know about whether the State Lands Commission returned that letter to Victor Adorian saying, 'no, these are not public trust lands,' because if they are formerly submerged and the County is issuing leases on them and the County is claiming to own them, they certainly should be in the hands of the Lands Commission.

Chairman Searcy asked whether the Department has information on the space that Café Lorelei would utilize. Mr. Moliere responded that the individual concession contracts define the space and copies of the agreement are placed on the public information table.

Mr. Robert Varney commended Café Lorelei's concessionaire and said that the concession would be a welcome addition to Chace Park.

*Vice-Chairperson Stevens moved and Commissioner Lesser seconded a motion to recommend Board approval of awarding Café Lorelei the Burton Chace Park concession. The motion passed unanimously.*

**b. Contract for Marina del Rey Water Shuttle Service**

Mr. Wisniewski said that staff submitted to the Commission the proposed contract for the Marina del Rey Water Shuttle Service. The service is expanded and will operate for two years. The contract term is from May 28, 2004 through September 5, 2005. Patrons will be charged \$2.00 per trip. Three boats will operate with a fourth boat on holidays and Thursday evenings to improve service to the pre-concert series in Chace Park. The maximum compensation under the contract is \$311,821, which the Director is authorized to increase by 20% if the service is expanded.

Mr. Wisniewski pointed to a map on display that identified the shuttle locations. He said that there would be sites at Fisherman's Village, Chace Park, Marina Beach/Parcel 91 dock, the Fire Station dock and the Dolphin Marina and Marina Harbor docks. Three shuttles would operate on a continuous basis and a fourth shuttle would be used on heavy days.

Mr. Wisniewski said that the Department received one proposal for the shuttle service and it was from the same gentleman who operated the service last year. The Department has secured a loan from the Quality and Productivity Commission's Investment Fund for the operation of the program and the Department has an option under the contract to purchase the vessels to reduce program costs. He said that 13,300 riders used the shuttle last year and he hopes for a significant increase this year due to the expanded service.

Chairman Searcy asked whether the Commissioners had questions or comments on this agenda item. The Commissioners indicated that they had no comments or questions. Chairman Searcy opened the floor to public comment. Hearing none, he entertained a motion on the item.

*Commissioner Lesser moved and Vice-Chairperson Stevens seconded a motion to recommend Board approval of the proposed contract for the Marina del Rey Water Shuttle Service. The motion passed unanimously.*

Mr. Wisniewski commented that he is particularly delighted that there weren't any negative comments from the community regarding the shuttle service. He said that the program was extremely well received and was used by many people, some of whom could not have afforded to rent a boat and were pleased that the shuttle provided an inexpensive way to see the Marina.

**6. STAFF REPORTS**

**a. Ongoing Activities Report**

**-- Board Actions on Items Relating to Marina del Rey**

Mr. Wisniewski informed the Commission that there is an additional item that Mr. Chesler wants to share with the Commission. Mr. Chesler said that on May 7, 2004 the County would receive a ceremonial check for \$1.75 million for the second phase of the Marina Beach Water Quality Improvement Project. The Department is working with Supervisor Knabe's office to staff the event. Mr. Chesler said that staff would send a notification of the event to each Commissioner.

**-- Design Control Board Minutes**

Mr. Wisniewski reported that the March 25, 2004 Design Control Board minutes were submitted to the Commission and copies were placed on the public information table.

**-- Oil Seepage on Admiralty Way**

Mr. Chesler reported that recently there was a line breakage on a 4-inch oil line that is operated by Southern California Gas Co. The location of the breakage is the corner of Palawan and Admiralty Ways in front of the Harbor House restaurant. The Fire Department and the Office of Emergency Services responded to the breakage immediately. Through tremendous effort and research, the line's owners were located and the site was cleaned. There were only 15 barrels of oil that were released and those were properly contained and discharged. The street and line were repaired and are back in operation.

Chairman Searcy opened the floor to public comments.

Mr. John Davis, speaking on behalf of the Sierra Club, said:

As you know, there has been a lot of development proposed and approved by this Commission over in this same area that the pipeline goes near and is adjacent to. The County never revealed the fact that this pipeline existed in the EIR, for instance, for Deauville and Bar Harbor. Also, this report is absolutely misleading. I spoke to the Division of Oil and Gas Resource's person who is administering this leak and he said that the origin of the condensate...was Del Rey 10, not in Venice...the condensate was through the line that is owned by Sempra Energy. So, there's no question who owns the line, it's Sempra Energy. The line was supposed to have been abandoned some time ago, but it was never decommissioned. So, according to the Department of Oil and Gas Resources, it's not supposed to be used for anything right now and it should be decommissioned. Del Rey 10, according to the state and not the County, that should know better, the State Department of Oil and Gas Resources says that it's Del Rey 10. Del Rey 10 is supposed to be a monitoring well for the underground gas storage facility, which is only according to the maps of the Southern California Gas Company. It's supposed to extend slightly into the harbor. However, the Department of Oil and Gas Resources states that they use this well not just for monitoring, but to depressurize the underground gas storage facility when necessary and then float combustible gas, along with gas condensate, perhaps oil, to Sempra.

The problem with Del Rey 10 is, as we look at its production records, there is no record of anything being produced, whether it's releasing pressure from the Gas Company or oil condensate. There's no record whatsoever and Sempra is the one that's supposed to report what's produced or extracted from that well to DOGERT [?]. It's showing zero production, however, Sempra admits that it flows gas through here to equalize pressure on the underground storage facility, which is not supposed to be under the Marina in the first place. So, as we ask ourselves, during the course of the EIR for Deauville and Bar Harbor, did the County know this line existed and if they did, why did they not present that information at the Department of Regional Planning? As these lines are old or damaged by corrosion, they're damaged by seismic activity. They often times leak and they go right through residential areas right along Admiralty. We ask ourselves, are these people safe and is the County purposely withholding information regarding these lines and the fluids transmitted through them from the public so as to encourage developers to develop without having to meet the legal constraints? My final comment is, when the County of Los Angeles finds out that there is a toxic substance that is leaked it is supposed to report that to the governor's Office of Emergency Services. I would like to know if the County transmitted the fact that it knew a toxic substance was released to the governor's Office of Emergency Services as required by law?

Commissioner Lesser asked whether Mr. Davis' comments are accurate. Mr. Moliere responded that the pipeline is an unused line and has been for a number of years. Mr. Moliere said that it is not an active line. Del Rey 10, to which Mr. Davis referred, is an equalization line and does not pump.

Mr. Moliere explained that the Gas Company has indicated that it would abandon the line, which the Gas Company is in the process of doing. The small leak was only about 20 gallons and was condensate that had built up over the course of time. Initially, the line was not part of the map for the general system and, therefore, there was difficulty finding who owned it because it was a different division of Southern California Gas and Sempra. Once that was found, the repairs were done. He said that the Department has worked with the Gas Company to make sure that the pipeline is properly mapped and part of the Dig Alert system. The company is in the process of abandoning the pipeline.

Mr. Wisniewski informed the Commission that staff would report to the Commission when the pipeline's abandonment has occurred.

Ms. Andrus commented that she spoke to a Gas Company representative and she also did a videotape. Ms. Andrus offered to share the tape with the Commission. Ms. Andrus said that the representative informed her that there are active oil wells at the site, low producing wells, from which the company does not receive much revenue. She asked whether the Department reported the matter to the correct parties, particularly the governor's Office of Emergency Services.

Ms. Andrus requested that the public be given an opportunity to see the maps that identify the location of the pipeline along Admiralty Way. She commented that there is a lot of subsidence in the area and the public would like to have an idea of what is occurring underground.

Vice-Chairperson Stevens asked staff how far the pipeline extends. Mr. Wisniewski responded that he did not know the pipeline's extent, however, there are maps that document the underground lines in the Marina and staff would tell the Commission at the May meeting where to access this information.

**b. Marina del Rey Convention and Visitors Bureau**

Ms. Moore reported that business picked up in early 2004. Hotel occupancies in January were at 73% compared to 66% in 2003. In February, hotel occupancy was up to 71%, compared to 66% last year. The market strength that existed prior to September 11, 2001 hasn't been regained, however, Ms. Moore said that she's optimistic that 2004 will be a very good year for tourism growth.

Further, Ms. Moore reported that the Visitors Bureau is adding two international trade exhibitions to its schedule in an effort to focus on generating more foreign tourism business from international tour operators. The Bureau's research shows that Marina del Rey welcomes visitors from all over the country and world, particularly the United Kingdom, Japan, Canada and Germany are very important sources of visitors to the Marina. The two shows that the Bureau staff is attending will provide them the opportunity to meet with the owners and product managers of the international tour companies from those markets. She said that with a strong Euro right now against the weakening U.S. dollar, it is an advantage for foreign travelers to come to the United States.

Additionally, Ms. Moore reported that within the next couple of days a new coalition, comprised of the Marina Visitors Bureau and the Convention and Visitors Bureaus of Santa Monica, West Hollywood and Beverly Hills, is hosting a group of French and British travel writers on a tour through Marina del Rey.

**7. COMMUNICATION FROM THE PUBLIC**

Chairman Searcy opened the floor to public comment.

Mr. Rigopollos informed the Commission that he has been a liveaboard in the Marina for approximately six years. He said that marinas know exactly who are legal and illegal liveaboards. Dockmasters have free reign to treat illegal liveaboards as they wish since the illegal liveaboards have no rights. He said that he could not afford to live as a legal liveaboard when he first arrived in the Marina and, overtime, the Marina has become his home. Mr. Rigopollos was kicked out of Mariner's Bay in December after his dog attacked someone else's dogs. Since the eviction, Mr. Rigopollos has

been back and forth between the anchorage, guest docks and Sheriff's Department. He was arrested after being accused of trespassing on the docks at Mariner's Bay. Also, his boat and car were impounded. Mr. Rigopollos said that, despite all of this misfortune, he is not against the County, but he would like to see improved relations between the public and the entities that operate here. He said that he has a feeling that the sheriffs and Beaches and Harbors' staff are frustrated with him and biased against him. Mr. Rigopollos said that he would like a meeting between all of the parties and a more mature way of addressing the issues.

Mr. Rigopollos also informed the Commission that the new island slips in Basin A have dangerous gangways leading down to the central area where the boats are located. He said that the gangway doesn't have a dock area built underneath it and when a boat takes on a lot of windage and its motor fails, the boat can be pushed underneath and face a lot of compression and scissoring action that could maim someone. He suggested that a barrier be installed so that when a boater starts heading toward the gangway there is something to fend off on the water level.

Mr. Brian Harr said that anyone with a boat and a slip who wants to liveaboard and is willing to obtain the necessary permit and pay the required cost should be allowed to do so. He said that he read a quote from Paul Wong in the Argonaut stating that the Marina doesn't have a quota for the number of liveaboards that are allowed here. Mr. Harr said that many people believe that there is a quota. Also, there are waiting lists for liveaboards in the Marina and docks that will accept liveaboards are hard to find.

Mr. Harr said that a lot of boats in the Marina don't have current registrations. He suggested that if the Department wants to get rid of some of the boats in the Marina, all that it needs to do is require boat owners to have current registration and valid insurance. He also suggested that one way to get rid of "floating apartments," which have nothing to do with boating, is to require boaters to demonstrate their boats' functionality.

Mr. Harr also commented that Chace Park's docks should not be restricted to a seven day maximum stay since many of the docks are empty a lot of the time anyway. He said that lifting this restriction would provide the County with increased revenue. Mr. Harr again suggested that the Department request lessees to avail their slips to Chace Park's transient tenants when needed. He said this would be another way to generate revenue.

Commissioner Lesser said that he recalls receiving information from a previous meeting that the Marina's percentage of liveaboards either compares favorably or close to the marinas in the surrounding area. He asked whether there is a limit to the number of liveaboards allowed. Mr. Wisniewski responded that there really isn't a limit. Commissioner Lesser asked whether there is a size requirement. Mr. Wisniewski responded that it is pretty much up to the lessees. Mr. Wisniewski added that, in general, there is a 10% liveaboard rate in the Marina. This is not per any law or requirement from the County.

Commissioner Lesser asked whether the lessees could be required to take more or take less liveaboards. Mr. Wisniewski responded "no" and said that the County could not impose such a requirement.

Commissioner Lesser asked Mr. Wisniewski how many people did he think with boats in the harbor would like to become liveaboards but are not allowed. Mr. Wisniewski responded that there are many people who would like to liveaboard since it is an inexpensive way to live on the water. He said that there is a delicate balance since liveaboards bring a valuable service to an anchorage because they add security. He said that you don't, however, want them overwhelming a facility because if they are not active recreational boaters they frustrate the mission of the harbor.

Mr. Tom Costel said that he represents an informal committee of Kingswood tenants and in meetings with the tenants they referred to a discussion they had with Archstone representatives at the February Small Craft Harbor Commission meeting. Subsequent to the meeting, the tenants were "given

documents regarding evictions...that don't seem to be in compliance with what representations were made by Archstone-Smith." Mr. Costel asked whether he could address this matter "offline" with the Commission. Mr. Wisniewski suggested that Mr. Costel speak with Mr. Moliere and if, after speaking to Mr. Moliere, Mr. Costel doesn't feel the Department is addressing the tenants' concerns, Mr. Costel could address the Commission.

Vice-Chairperson Stevens commented that she recalls the discussion between Archstone representatives and Kingswood tenants occurred after the Commission meeting had adjourned. The Commission, therefore, has no idea what promises were made or what was said between the parties.

Mr. Costel clarified that he isn't stating what definitely occurred at the Commission meeting, but is relaying what some of the Kingswood tenants told him. The tenants told him that the verbal representations made at the meeting are not being met. Mr. Wisniewski said that it doesn't matter whether commitments were made privately or formally before the Commission, the Department would like to be informed if there is a lease violation.

Ms. Andrus said that workshops were held after the February Commission meeting and the workshops and the Kingswood issue divided the public and the workshops were a failure. She asked when the issue of the need for more workshops will be addressed. Ms. Andrus also reiterated that the discussions that occurred at the workstations should have been included in the minutes because that is the only way the public would know what promises were made to Kingswood tenants.

Ms. Andrus said that, relative to EDAW, she had a conversation with "David" about way finding and this discussion was also excluded from the minutes. She said that she had suggested during the conversation that, if the intent is to inform the public about the Marina, perhaps, freeway signs directing people to the Marina could be used. Ms. Andrus said that she had hoped the Visitors Bureau would support this idea. She commented that EDAW was paid \$170,000 by the public, yet the EDAW consultants have never been introduced to the public. Ms. Andrus said that she happened to be at a Design Control Board meeting when EDAW was introduced and its representatives expressed interest in meeting with the public, yet they have failed to do so.

Ms. Andrus stressed the need to include every issue in the minutes that was discussed during meetings and workshops. She also stated that the lessees in the Marina appear to have more power than the Commission and this fact is disappointing. She questioned why the lessees aren't on the Commission since they have so much power. She suggested that someone who represents the tenants join the Commission, which might improve dialogue and help to resolve the serious issues.

Mr. Varney said that he has lived in the Marina for 30 years and at one time owned one of the Marina's nicest floating homes, which he lost in a battle with one of the marinas. When he lost his home, he became a transient at the docks. He said that he's been made into a really bad character. He's received 16 citations since he lost his slip at Tahiti Marina. He asked the Commission whether he is the type of person who makes trouble. Mr. Wisniewski responded that he has had personal experience with Mr. Varney over a period of several months and it isn't right for someone to both take up the amount of staff time that Mr. Varney has taken and to continue to violate the law.

Mr. Varney said that before losing his home no one had even heard of him in the Marina and he never caused any trouble. He said that he operated a non-profit agency for the homeless for over 16 years and for 30 years he raised money for charities. He stressed that he isn't a bad person or the type of person who doesn't belong in the Marina. Mr. Varney informed the Commission that he is a good citizen and his father, his brother and himself have all done military service.

Mr. Varney said that the first time he was arrested occurred when he occupied the 4-hour dock at Chace Park. He stayed a few minutes over the limit because of boat problems and when he tried to explain to staff the reason for remaining over the limit, they contacted the Sheriff's Department. Mr. Varney then tried to explain to the sheriff why he had violated the 4-hour limit and the sheriff wrote him a citation anyway. Mr. Varney said that when he signed the citation and attempted to go take care of

his boat, the sheriff pointed a gun in his face and told Mr. Varney that he was under arrest. Mr. Varney added that the Sheriff's Department informed him that Beaches and Harbors' staff wants the sheriffs to write him citations.

Chairman Searcy told Mr. Varney that he feels compassion for his situation, but Mr. Varney was already advised that if his boat was taken illegally he should obtain legal assistance, which Mr. Varney says he has done. Chairman Searcy also informed Mr. Varney that the Commission cannot resolve the issue of his having experienced a downturn in life.

Mr. Varney said that it's not just about him and his problems, but also the conspiracy of agencies that are trying to get rid of people they don't think belong in the Marina. Mr. Varney said that he would report to the Commission on how cooperative Beaches and Harbors' staff is the next time he visits the Department.

Mr. John Davis said, speaking on his own behalf:

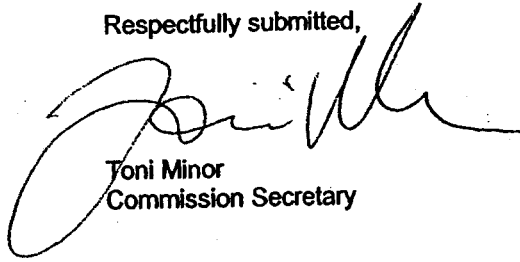
One of the reasons that you feel frustration is because you're feeding us a line of crap. The County is trying to quick claim, subdivide...at a surplus property. Look at the grand jury report of 1981, which you are entirely disregarding. In fact, I think that it's time for a new grand jury investigation. As you know, per the document that I submitted to you at the last night meeting, Congresswoman Jane Harman has asked the U.S. Justice Department to step in and look at the lands transactions that occurred in the creation of Marina del Rey. In relation to Commissioner Stevens' question about where that line goes, it goes all the way along Via Marina and Admiralty. The County should know about this and it should have been brought up at Regional Planning. The question is, does the County own the mineral rights under Marina del Rey and, if they do, are they leasing those mineral rights to operators and, if so, we like to see who the operators are and if they're producing low level volumes of oil and pumping into that line without informing Regional Planning and the environmental watershed section.

To correct Stan again, Stan made the claim that the majority of demand is for boats in the 35' range, however, the Department of Boating and Waterways has issued a report that says that is the case in most of California, with some exceptions. Marina del Rey is an exception Stan. Demand for boat slips in Marina del Rey is the exception to the Department of Boating and Waterways' report and it is for boats much smaller than 35', so you were partially right, but in relation to Marina del Rey, you are dead wrong and the authority is the Department of Boating and Waterways' report, not any document produced by the County of Los Angeles. Your evaluation committee is in violation of the Brown Act. It is making decisions regarding land use without including the public. As you know, the County has been recently sued by the L.A. Times and the Times won. There is a statute now, I mean there is a precedent, and this evaluation committee must comply with the Brown Act and hold its meetings in the light of day. The Lands Commission is supposed to own all submerged and formerly submerged lands according to the Public Resources Code. Why is that not the case in Marina del Rey? The state Harbor Code requires fair and reasonable rents. Why are we using market rates? The Constitution of the state of California guarantees every citizen the right to walk on and fish off public docks. These are public docks. Why are they gated and why is the County of Los Angeles absolutely and knowingly violating the constitution of the state of California in this respect? Finally, in regard to deferred maintenance, lessees are to be punished for not maintaining their properties in a safe fashion, but this Commission has knowingly substituted Policy Statement 25 and rewarded the lessees by giving them perks that enable them to sell their leases in some cases and make money for violating safety provisions and it is a disgusting matter and I think the entire situation is being run like a business and it is going to be brought to an abrupt halt because it is no longer encapsulated by the County. There are other higher powers involved.

8. **ADJOURNMENT**

Chairman Searcy adjourned the meeting at 3:15 p.m.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Toni Minor", is written over the typed name and title.

Toni Minor  
Commission Secretary

Small Craft Harbor Commission  
Meeting of May 12, 2004  
Minutes

Commissioners Present

Harley Searcy, Chairman  
Carole Stevens, Vice-Chairperson  
Joe Crail

Department  
of Beaches &  
Harbors:

Other County  
Departments:

Also Present:

Stan Wisniewski, Director  
Roger Moliere, Deputy Director, Asset Mgmt & Planning Bureau  
Joe Chesler, Chief, Planning Division

Tom Faughnan, County Counsel  
Captain Sam Dacus, Sheriff's Department  
Deputy Paul Carvalho, Sheriff's Department

Beverly Moore, Executive Director, MdR Convention & Visitors  
Bureau

Excused Absences

Russ Lesser

1. CALL TO ORDER & ACTION ON ABSENCES

Chairman Searcy called the meeting of the Los Angeles County Small Craft Harbor Commission to order at 9:43 a.m. in the Burton W. Chace Park Community Room, Marina del Rey.

*Vice-Chairperson Stevens moved and Commissioner Crail seconded a motion to excuse Commissioner Lesser from today's meeting. The motion passed unanimously.*

2. APPROVAL OF MINUTES

Chairman Searcy said that approval of the April 21, 2004 minutes would be deferred to the June 9 Commission meeting since there isn't a quorum of Commissioners present who attended the April meeting.

3. REGULAR REPORTS

a. Marina Sheriff's Department Report

-- Crime Statistics

Captain Dacus reported that the summer generally brings an increase in crime and there is approximately a 17% increase in overall crime with the largest being in the area of vehicle burglaries. Captain Dacus said that there is also an increase in residential burglaries and in most of the cases that he reviewed the burglars were people that the residents knew.

Captain Dacus also reported that the West End Commander's meeting has resumed. These meetings provide an opportunity for captains from the Marina Station, Culver City, Santa Monica, Beverly Hills, the Airport and a couple of L.A.P.D. stations to share resources. He said that this group has successfully shared information, some of which has led to the arrest of people involved in crimes from various areas. The California Highway Patrol (CHP) is also involved with this group and law enforcement officers are now using Code 100 to alert the CHP when crimes occur in their areas.

Further, Captain Dacus reported that the Sheriff's Department will experience budget cuts but would try to compensate by utilizing techniques to show officer visibility since this more than anything else has a tendency to reduce crime.

Captain Dacus reported that the Sheriff's Department received approval for a Department of Boating and Waterways' grant to outfit a 42' boat, the "Yellow Tail," (that the Sheriff's Department obtained from the Department of Fish and Game) for use in homeland defense. The Airport police also received approval for a boat to use in homeland defense. He said that both the Sheriff's Department and Airport police are awaiting final authorization from the Secretary of Homeland Defense, Tom Ridge.

Captain Dacus said that the Airport police boat is a regional resource and they are discussing the possibility of having the boat stationed in the Marina area, which will probably require the Board of Supervisors' approval. The boat would be a shared resource between the Sheriff's Department and other agencies in the area.

In response to Vice-Chairperson Stevens' question from the April meeting regarding the impact of budget cutbacks on the Sheriff's Department, Captain Dacus informed the Commission that there is no definitive answer to this question, however, he knows that there will be an impact in many areas and the Sheriff's Department will continue to provide to the best of its ability the level of law enforcement that's sufficient for the area.

-- **Enforcement of Seaworthy & Liveaboard Sections of the Harbor Ordinance**

Deputy Carvalho reported that no new Notices to Comply were issued last month, however, staff conducted a follow-up on ten outstanding Notices to Comply. He said that the Department hasn't heard from all of the owners, but it appears that some of them who received notices will be able to make the necessary repairs to bring the vessels into compliance with the ordinance and a few of the owners have asked for and were granted an extension.

Deputy Carvalho further reported that there are 17 vessels at the docks. Seven are still awaiting disposal and 10 are awaiting lien sale procedures. To date this year, 28 vessels have been disposed of, which is a substantial amount compared to last year.

b. **Marina del Rey and Beach Special Events**

Mr. Wisniewski requested that the Commission receive and file the report. Chairman Searcy asked whether the Commissioners had questions concerning the report. Hearing none, Chairman Searcy said that the Marina del Rey and Beach Special Events Report would be received and filed.

4. **OLD BUSINESS**

a. **Marina del Rey Slip Replacement**

Mr. Wisniewski said that in response to Chairman Searcy's request at the April meeting, staff prepared and submitted to the Commission a report on the Marina del Rey slip replacement.

Chairman Searcy noted that the report shows a reduction of the total number of slips from 5,246 to 4,791. He asked Mr. Wisniewski to explain the reduction. Mr. Wisniewski explained that the reduction is attributable to the redevelopment of the anchorages on Parcels 111 and 112 as well as Parcels 12 and 15. The Department supported both lessees' proposals to build larger slips, which eliminated some of the smaller slips. Mr. Wisniewski said that staff informed the California Coastal Commission that the Department would not pursue additional reductions in slip numbers until the Department could fully study and resolve the impact on small boat slips.

Chairman Searcy asked whether this means that the numbers are frozen at this point. Mr. Wisniewski responded that they are frozen with the exception of the number of slips that will be lost as a result of engineering requirements. He said that there is only so much water area and, in some cases, space is taken by double slips and Americans with Disabilities (ADA) requirements.

Chairman Searcy opened the floor to public comment.

Mr. Robert Olsberg, Santa Monica Windjammers Yacht Club member and small boat owner, asked the Department to explain the need for the replacement of small slips. Mr. Olsberg said that most of the sailors in the Marina are day sailors who, in general, don't take extensive trips to places, such as Avalon or Santa Barbara. Most of the Marina's sailors are here for pleasure craft enjoyment and local fishing. Mr. Olsberg said that he doesn't see the need for larger slips at this time, especially since 80% of the Marina's boat owners are day sailors.

Mr. Wisniewski responded that there is an unmet need for slips generally in the 35' and over category and there is still a vacancy factor for smaller slips. However, until the Department is able to fully evaluate the impact of converting additional smaller slips to larger slips, the Department would not support such a change. He said that the vacancy factor is a good cushion to ensure the accommodation of small boaters. The Department does not want to negatively impact the small boater and would not support any additional development proposals. He added that the reason the Department supported the two previous proposals (for Parcels 12/15 and 111/112) was because there is a fairly strong demand for larger slips in Marina del Rey.

Mr. John Davis said:

The Director is providing false and misleading information to this Commission. That could be easily proven. He is stating that his Department has determined that there is a large vacancy for small slips and an unmet demand for 35' - 40' slips. This contradicts a survey done by the California State Department of Boating and Waterways, which says that Marina del Rey is an exception to that rule and the demand is for smaller slips not larger slips. It seems the County Department of Beaches and Harbors is stepping over its jurisdiction and making these determinations when they've already been made by the Department of Boating and Waterways. I don't know if the Director has even taken a look at this important document that's been available for at least two years, but I have it here. It's in PDF form downloaded from the Department of Boating and Waterways' website. I would like you to take this and print it and I would like the Commissioners to read this and read the exception, which is Marina del Rey, and you will see the Executive Director is providing you with false and misleading information that contradicts the Department of Boating and Waterways' study.

The document says it breaks down the size of the slips as they relate to the projected construction. That attempts to preordain the projected construction that would contradict the needs that were determined by the Department of Boating and Waterways. I don't understand how this happened. Again, we see a line that says 'no additional reduction in slip numbers would be supported by the Department' until we make the determination, but that predordains the fact that it would happen. It should be, if, instead of until. Again, the Department of Boating and Waterways' study needs to be examined in order to do what the Director just said, which is to fully study the issue of small boat slips. You must study the Department of Boating and Waterways' evaluation of the demand and needs for slips in Marina del Rey that I present to you today.

Even though compliance with the Americans with Disabilities Act (ADA) is now a federal rule and not just a recommendation, it applies to small boat slips, which are in higher demand in Marina del Rey as well as larger slips. To say that there will be a reduction in boat slips or the size of boat slips due to the ADA rule is frivolous and unsupported by fact or reason. There are no types of measuring indications that could validate such a claim. Also, on the issue of these proposed docks, under the state constitution, you can't gate them. People are allowed to fish from them. So, to close, I would recommend highly that this Commission print the Department of Boating and Waterways' study, evaluate it independently and compare it with the Director's comment to see if he is providing false and misleading comments to this Commission. I will submit it to the Secretary to retain for the record.

Mr. Robert Olsberg, Santa Monica Windjammers Yacht Club member and small boat owner, asked the Department to explain the need for the replacement of small slips. Mr. Olsberg said that most of the sailors in the Marina are day sailors who, in general, don't take extensive trips to places, such as Avalon or Santa Barbara. Most of the Marina's sailors are here for pleasure craft enjoyment and local fishing. Mr. Olsberg said that he doesn't see the need for larger slips at this time, especially since 80% of the Marina's boat owners are day sailors.

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Ms. Andrus' testimony to the Commission included reading from the Parcel 12/15 (Deauville Marina and Bar Harbor) lease as follows:

The ultimate object of this lease is the complete and continuous use of the premises herein demised by and for the benefit of the public. The immediate object being the development and realization of the greatest possible revenue therefrom. It is agreed that said immediate and ultimate objects are consistent and compatible according to the lease covenants and agrees that he will operate the said premises fully and continuously to the end so that the public may enjoy maximum benefit and the County may obtain maximum revenue therefrom. In the event of any dispute or controversy relating hereto this lease shall be construed with due regard to the aforesaid objects.

Ms. Andrus then provided the following comments:

Although Two-Partnership has been paying \$32,000 or so a month to the County for Parcel 12 or 112, I'm not sure what number that is, while it sits empty, this does not mitigate the benefit due to the public or the revenue to the County. With the rent increases on the degraded docks at Bar Harbor and your insistence that it is all in line with market value, this brings into question the revenue due the County from Parcel 11, Deauville Marina. This parcel needs to be reassessed unless we're being asked to further subsidize Doug Ring and the double standards he enjoys. Outside of that, businesses are suffering from this long time consequence of deferred maintenance and infrastructure. It goes without saying that when you eliminate a huge part of the population, along with that goes the revenue the local businesses would have been paying to the County. There are consequences suffered due to the mismanagement that has outlasted its useful life. Something must be done. Can someone explain why Dolphin, a brand new marina, is charging less for its slips than Bar Harbor?

I'd also like to submit the editor's report by David Johnson, from April 22 and May 6, for the Commissioners to read...I think he sums up pretty nicely the effects of what's going on in the Marina. I really want Stan to know that this is not a personal attack on him. I think he really knows that, but the management...maybe he came into this problem, but something has to change.

Chairman Searcy requested Ms. Andrus to give the material to the Commission Secretary so that Ms. Minor can make copies to distribute to Commission members. Ms. Andrus informed him that she already submitted the information to Ms. Minor.

5. **NEW BUSINESS**

a. **Consent to Assignment of Leasehold Interest – Parcel 64 (Villa Venetia Apartments) - Marina del Rey**

Mr. Moliere informed the Commission that this agenda item requests the Commission's recommendation for Board approval of the assignment of Villa Venetia Apartments from the current ownership to a group consisting principally of individuals from the Wolff Company and Lyon Capital, both of whom are experienced and prominent developers and operators of multi-family homes in Southern California. He said that the Department's responsibility begins with assessing whether the financial condition of the proposed assignee, the price to be paid for the leasehold as it relates to the development, and the management of the leasehold of the new lessee, is in the best interest of the Marina. Mr. Moliere said the Department believes that Wolff/Lyon meets these requirements; therefore, the Department is requesting the Commission to recommend Board approval of the assignment.

Vice-Chairperson Stevens asked whether staff knows why Tuxedo's management of the leasehold was for a short period of only five years. Mr. Wisniewski responded that the Department isn't aware of the reason for Tuxedo's sale of the property.

Vice-Chairperson Stevens said that Tuxedo refurbished the property but raised the rents, causing many of its tenants to leave. She asked whether the new lessee would raise the rents. Mr. Wisniewski responded that in the event the prospective lessee raises the rents it would fall under section 16 of the lease and the Department would review the proposed rents to ensure that they are within market levels.

Mr. Wisniewski informed the Commission that representatives from Wolff/Lyon are attending today's meeting to answer any of the Commission's questions.

Mr. Steve Jones, a representative of the Wolff/Lyon group, came to the podium. He informed the Commission that Tuxedo refurbished some of Villa Venetia's apartments, however, the apartments have fallen into disrepair and there will be a nominal increase in some of the rents, which will be counterbalanced by improvements to the premises.

Chairman Searcy asked Mr. Jones to explain what he means by "nominal increase." Mr. Jones responded that the nominal increase is calculated in the range of 10-15 cents per square foot. Mr. Jones also commented that the lease is quite specific about rents not exceeding fair market value.

Chairman Searcy asked whether Mr. Jones wished to disclose the reason that Tuxedo is selling the property. Mr. Jones responded that he doesn't know the reason since Tuxedo did not disclose why it was selling the property.

Mr. Wisniewski said that Wolff/Lyon, the prospective assignee, has indicated its interest in a lease extension and the Department made it clear to the assignee that the assignment does not give the assignee a first right of refusal or any ingrained right to a lease extension down the road. The amount of redevelopment is something that is yet to be negotiated. Mr. Wisniewski said that he wanted to make sure that the Commission knew that this is not a factor that is before the Commission today.

Chairman Searcy asked the remaining term on the existing lease. Mr. Moliere responded that he believes it to be 21 years.

Chairman Searcy opened the floor to public comment.

Mr. John Davis said:

Again, the County is really making a lot of mistakes. This constitutes gifting under article 16 of the constitution. I see that a lawsuit has actually been filed regarding this matter on another parcel. The judicial outcome will directly affect all proposals for 'lease extensions,' which is in reality, new leases.

The County hasn't disclosed that there is an active earthquake fault under this parcel that is under the Southern California Gas storage field and it's adjacent to several leaky oil and gas wells. It's also in a seismic hazard zone. Under article 16 of the constitution, this assignment constitutes deferred maintenance gifting by deferred maintenance never completed. Furthermore, the sale price of the assignment may not reflect the possibility that the potential lease extension 'real new lease' may not be granted due to the illegality and that the existing buildings must be recycled under the general plan and the land use plan that calls for recycling, not for demolition and rebuilding.

Should the Commission recommend the sale of this lease it may constitute further illegal gift giving under article 16 of the constitution. More over, the legality of the

length of the original lease under the state constitution and Public Resource Code regarding lease of public property may be violated and in question if you make this recommendation and you'll be doing so knowingly. The lease, by law, must end in 40 years. The original term of the lease may not be legal. The terms of these leases may end in 40 years from the day of their origin. State lease law requires that at the end of the 40 years, the premises must be returned to the County in ...clean shape, then public hearings must take place. Public hearings must be held to determine the future use of the land that is taken back by the County in ...clean shape to determine what other uses might be more suitable, such as a park.

Given the inappropriateness of residents on such a dangerous parcel and given the fact that there is an ESHA, an environmentally sensitive habitat area, for blue herons on the property, future demolition and proposed changes may not even be able to take place because it could disrupt ESHA. I'm sure the Coastal Commission will support us on this since they have already and have already told the Department of Beaches and Harbors the fact that it's being treated as an ESHA although it may not already have been declared so.

After the County retains the land, gives the land back after the public lease period, state lease law requires an open hearing to be held to determine what the price for the lease should be. If it's to be leased, then it should be open to public bid, otherwise, it constitutes gifting under article 16 of the constitution. I recommend that you consult County Counsel to see if any of this would constitute gifting because then it would be his responsibility and not yours directly

Mr. Donald Klein asked staff for the expiration date of Parcel 64's current lease. Mr. Moliere responded that he believes the remaining term is less than 20 years rather than the 21 years he stated earlier. Mr. Moliere said that he could give the exact time to Mr. Klein after today's meeting.

Mr. Klein asked whether a lease option is involved in the assignment. Mr. Wisniewski responded that it is not.

Mr. Klein informed the Commission that the lease should mention that the location is an ESHA (Environmentally Sensitive Habitat Area) and the lessee must comply with any related requirements.

*Commissioner Crail moved and Vice-Chairperson Stevens seconded a motion that the Commission endorse the Department's recommendation to the Board of Supervisors regarding the Consent to Assignment of Leasehold Interest - Parcel 64 (Villa Venetia Apartments) - Marina del Rey. The motion passed unanimously.*

## **6. STAFF REPORTS**

### **a. Ongoing Activities Report**

#### **-- Board Actions on Items Relating to Marina del Rey**

Mr. Wisniewski informed the Commission that the report summarizes the recent Board of Supervisors action authorizing the EDAW contract. He said that EDAW is one of four of the Department's planning and design consultant firms.

Mr. Wisniewski said that the Ongoing Activities Report also includes a draft of the April 15 Design Control Board minutes as well as an update on the underground pipeline located in front of the Harbor House restaurant.

The Ongoing Activities Report also provides follow up information that was requested at the April meeting regarding Chace Park's transient docks. Mr. Wisniewski commented that the Department

doesn't currently keep statistics on the number of people who wish to use Chace Park's transient facilities, but plans to begin collecting this data.

Vice-Chairperson Stevens asked whether the part of the pipeline that leaked was disconnected or whether the entire pipeline was disconnected. Mr. Wisniewski responded that he believes the pipeline was disconnected at its various points of connection so that there could not be any transmission through the pipeline. The pipeline was also depressurized so that there would not be a build up of gases. Chairman Searcy added the report also indicates that the gas company is in the process of evaluating various methods of abandoning the pipeline.

Chairman Searcy opened the floor to public comment.

Ms. Andrus referred to the April 15, 2004 Design Control Board (DCB) minutes, Item 3A—Urban Design Guidelines-Public Workshops #2, in which Board member Susan Cloke asked Joe Chesler, Chief of the Planning Division, whether staff received public feedback regarding the proposed design guidelines. Ms. Andrus asked for clarification as to whether Ms. Cloke was referring to the public feedback obtained at the February Small Craft Harbor Commission meeting.

Mr. Wisniewski suggested that Ms. Andrus attend the next DCB meeting so that she could receive clarification from the DCB members directly. He added that if Ms. Andrus is unable to attend the next DCB meeting, she could submit her questions to the Board members in writing for inclusion in the next DCB mailing.

Ms. Andrus asked whether staff provided the DCB with the public's comments from the February Small Craft Harbor Commission meeting. Mr. Wisniewski responded that the DCB members were given the public's comments.

Ms. Andrus commented that the February workshops were a disappointment to everyone. Ms. Andrus asked when the Small Craft Harbor Commission would address the issue of scheduling more workshops with EDAW included. She requested that the Commission include this matter on the June agenda. Mr. Wisniewski informed Ms. Andrus that EDAW representatives attended the February Small Craft Harbor Commission meeting and were available to meet with members of the public at that time.

As for Ms. Andrus' comments that the workshops were a disappointment to everyone and the Kingswood issue dominated the February meeting, Chairman Searcy explained that the Commission did not try to control the Kingswood tenants or prevent them from expressing their concerns. He said that, although a number of Kingswood tenants spoke, there were also speakers on other issues. The Commission very much wanted the workshops to be an opportunity for the public to receive information on several issues and meet with consultants and lessees. Chairman Searcy added that he would like the Commission and Department to receive some recognition from the public for having made a very serious effort to provide a forum for the public to express their concerns and contribute input.

Chairman Searcy informed Ms. Andrus that the Commission would look at the issue of conducting another workshop and ways to make it as effective as possible.

For clarification purposes, Mr. Wisniewski informed the public that the design guidelines are within the DCB's jurisdiction and the DCB, rather than the Small Craft Harbor Commission, is the appropriate body to address the subject. He said that people who are interested can receive information on the draft urban design guidelines at the May 20, 2004 DCB meeting, which is scheduled for 2:00 p.m. in the Chace Park Community Room. EDAW representatives will attend the meeting and the public will have a chance to meet them.

Mr. John Davis said:

The County spent untold tens of thousands of dollars on EDAW but the public wasn't brought in from the beginning to ask what the public thought about it. It was all done behind closed doors and only after most of the decisions had been made without public comment was the public able to have input. Now we're told that we could help twist the guidelines that are in draft form. I think that we should have been involved a lot earlier on and now we're proposing about a quarter of a million dollars to do the same thing all over again and it's a complete waste of the public's money unless they have the full ability to participate and it's not necessary to hold an EDAW workshop at either a Design Control Board meeting or Small Craft Harbor Commission meeting.

Regarding the underground pipeline, I'm submitting 19 questions to the secretary that I'd like her to retain. I'd like the Department of Beaches and Harbors to answer each and every question before this Board at the next meeting.

Mr. Davis read aloud the following questions from his list:

1. How did the director determine that all of the oil and gas wells have been unhooked from the gas and oil pipeline?
2. When did the County of Los Angeles learn of the existence of the gas pipeline that has been used to transmit gas and oil?
3. Did the County provide surface easements across several leases in Marina del Rey by amendment to those leases?
4. Does the County and/or lessees receive revenues from this line? If so, how much and how are the amounts determined?
5. When did the County learn of the oil line referred to in today's report from the County?
6. Does the County and/or lessees receive revenues from this oil line?
7. Why does the County present a map from Navigation Technologies instead of using County and/or California Department of Conservation Division of Oil and Gas (DOGER) maps that more accurately show the wells that are hooked up to them?
8. Does the County of Los Angeles require NavTech to sign a non-disclosure agreement that prevents oil and gas lines hooked up to the transmission line from being disclosed to the public and, if so, why?
9. What oil and gas lines have been hooked up and are hooked up to either of these lines and where is the location of the production wells and records and how recently have these production wells been in operation?
10. Does the County of Los Angeles own or lease these wells? If so, what revenue has been generated from them for the County and/or lessees?
11. Why didn't the County enclose the existence of these wells in the environmental impact report for the Marina-Two project?

12. Why does the County claim that the gas line will be abandoned when it's already abandoned according to DOGER and what should be done is decommissioning?

Mr. Wisniewski requested that Mr. Davis submit his questions in writing so that the Department could respond to them. Mr. Wisniewski also referred to Mr. Davis' comment about twisting the urban design guidelines and Mr. Wisniewski said that it's more accurate to state that the Department is wrestling with the guidelines since they are in draft form and need to be developed.

**b. Marina del Rey Convention and Visitors Bureau**

Ms. Beverly Moore announced that on May 1, 2004, the Visitor Bureau's tourism website, VisitMarina.com, began offering online hotel reservations in real time, which makes it very convenient for visitors who are planning their summer vacations.

Ms. Moore also announced that the Bureau published a new version of the Marina del Rey Visitors Guide. This year's version includes a number of improvements, including all of the Marina del Rey restaurant locations. She informed the Commission that copies would be placed on the public information table and copies are available at the Visitors Information Center.

Further, Ms. Moore provided a follow up on her April report to the Commission regarding her plans to attend two international trade shows. She said that she attended these shows and held one-on-one meetings with foreign tour companies from over 17 countries. The foreign representatives were thrilled to have one central resource of visitor information in the Marina and these contacts will give the Bureau an opportunity to bid on future hotel business with these firms.

Mr. Wisniewski complimented Ms. Moore on the Visitors Guide and commented that it is the most professional brochure that he's seen produced on Marina del Rey.

Chairman Searcy opened the floor to public comment.

Mr. Davis commented that supporting hotels with County funds is a case of gifting under article 16 of the constitution. He said that the County is gifting hotel owners, who should pay for advertising themselves. He also said that the County is promoting businesses rather than the Marina as a small craft harbor.

**7. COMMUNICATION FROM THE PUBLIC**

Chairman Searcy opened the floor to public comment.

Mr. Davis submitted a list of questions to the Commission and requested that answers be provided at the June meeting. Mr. Davis said that he would request the Sheriff's Department to answer the questions that are within its jurisdiction.

He read aloud the following questions from his list:

1. Why isn't the Sheriff's Department enforcing certain County of Los Angeles and City of Los Angeles harbor codes?
2. Is there an uncoded statute of the state of California of 1959 that indicates the County of Los Angeles will own and operate Marina del Rey?
3. Is there an uncoded statute of the state of California whereby the County of Los Angeles was loaned \$10 million from state tideland funds to acquire lands needed to construct Marina del Rey?

4. Why have several boat slips been constructed in the federal easement at the east end of the main channel without coastal development permits? Does the County receive any revenue from these slips?
5. Why isn't the testimony and materials from these hearings being transmitted to the Board of Supervisors in relation to coastal development permit recommendations from this Commission?
6. When does the RFP selection committee meet? When are notices of these meetings posted? Are these meetings open to the public as required by the Brown Act?
7. Why does the County knowingly allow lessees to charge boaters to tie their vessels next to the seawall illegally? Why doesn't the County receive revenues for such tie-ups?
8. Why is the County, in contradiction to the state constitution, the Marina del Rey bond measure, the state harbor law and U.S. House of Representatives' Document 389, charging market rates instead of fair and reasonable as required on public trust and/or public lands as dictated by Public Trust Doctrine and Public Land Doctrine?
9. Why did the Chairman of this Commission refer to a report submitted by Counsel Rick Weiss regarding ownership of Marina del Rey as a legal brief when in fact it was simply a report?

Mr. Johnny Lucero and Ms. Patricia Raye submitted a document to the Commission and said that Chace Park staff gave the document to them. The document identifies a list of dates and fees. Mr. Lucero asked the Commission to clarify the document. Chairman Searcy requested staff to copy the document and return the original to Mr. Lucero. Chairman Searcy then informed Mr. Lucero that staff would review the document.

Ms. Raye referred to the document that Mr. Lucero submitted and said:

I want to explain this document...completely. I was given this document after trying very hard to stay here last month, the month before last, get my seven days, and I was told that, and I have documentation to prove the fact from Yahoo with regard to NOAA, I can prove that most of these days are red flag days. This was given to me after I was told that I had some days that I owed to the Park, which was true, and I owed three days because I had had some medical problems two months in a row and I hadn't paid and I kept going back to...Bernard. I sat in the office while Serge made out this document and copied it from another that was given to him by Jose. This particular document happens to be all red flag days and also...what they based it on was that we had not registered our boat properly. Well, there's a 1/18 and our boat is still registered until the end of January. Now, I can prove it. I have documentation. I have Yahoo reports that they are red flag days, which I offered to pay for. He trumped up a bill so that I could not stay here again this month, of \$250.00 back bills. There are other people that he did this to but they did not receive the same bill. Johnny's name is not on it, there is just a CF number. I went to Jose and asked him to put it on a Beaches and Harbors documented paper and sign it and he said to me, 'I don't have to sign anything.' I took it [the document] that day and Clark happened to be standing on the dock. Serge walked up to him, I saw this, and I said, 'I can prove this Clark.' I showed it to him. He is a very good officer, one of the best. He said, 'you don't only have a good case Tish you have a great case. Take it to the judge.' This is proof of harassment; it's proof of boycotting, blacklisting, discrimination and breach of civil rights.

This is a civil rights case that I'm taking to court. I'm on my seventh court date. I received my civil rights back from the sheriff, Patricia Riley, to be exact, a very good officer as well. I'm telling you that these men are simply doing their job because they're called out all the time by Jose. I have him on film telling them 'you never had so much trouble since you've been here.' I have their officers...because they're doing their jobs but they have to defer to his judgment. These men went through the academy and they're on the long haul. I believe that Officer Carvalho is on his 38<sup>th</sup> year but he has to stand in deferment to someone who hasn't even any education, no qualifications...By the way, I have medical bills now that I'm putting with the judge because I've had two nervous breakdowns due to this and the heat that he has caused them to do. It's not their fault. He is victimizing the Sheriff's Department as well.

Chairman Searcy requested staff to follow up and report at the June meeting regarding the document that was given to Mr. Lucero and Ms. Raye. Chairman Searcy also asked Tom Faughnan to keep the Commission posted if he becomes aware of any pending litigation concerning this matter.

Vice-Chairperson Stevens requested staff to report back to the Commission about the relationship between the Sheriff's Department and Chace Park's management staff.

Ms. Andrus indicated that she had a couple of questions that she would like the Department to answer. Chairman Searcy requested Ms. Andrus to submit her questions in writing so that staff could answer them. Ms. Andrus responded that she would provide the questions in writing, but she also wanted to verbally state the questions. Ms. Andrus said that she would like to have answers regarding: 1) How would Doug Ring's Deauville property be reassessed. 2) Why does the County allow Bar Harbor to charge more rent for slips while Dolphin, which is new, can charge less.

Ms. Andrus commented that if Doug Ring's property is in line with market value, the property should be reassessed. She stressed that Mr. Ring should be treated like any other lessee.

Mr. Kosta Rigopoulos, a transient boat tenant, angrily informed the Commission that his boat was impounded three times over the last three months and he has been continually harassed at Chace Park. Mr. Rigopoulos said that when he addressed the Commission in April his boat had been impounded from Chace Park's 4-hour dock and it took him two weeks to retrieve it at a cost of \$330. He said that he has spent approximately \$1,000 in boat-related fees and his boat has received damage because there's no where to dock it.

Mr. Rigopoulos asked the Commission to tell him who is responsible for writing the ordinance that prevents Chace Park from renting slips to people who have a marina eviction. Mr. Faughnan responded that the adopted written policy of the Department is that the transient docks are to be used on a temporary basis. The docks should not be used on a permanent basis, as a number of people have been attempting to use them.

Mr. Rigopoulos said that he read a rule that's in a book located in the Chace Park office that if "you're ejected from a Marina del Rey slip...you're not allowed to use Burton Chace Park." Mr. Rigopoulos said that people are only allowed to use Chace Park for seven days a week and these seven days make a huge difference. He also informed the Commission that his boat is currently on the 4-hour dock.

Chairman Searcy asked Mr. Moliere whether the rule that Mr. Rigopoulos referred to exists. Mr. Moliere responded that there are a variety of rules and the Department would be happy to report back on them at the June meeting.

Chairman Searcy informed Mr. Rigopoulos that staff would report on the rules at the June meeting.

Mr. Rigopoulos commented that the Sheriff's Department is in a bind because it relies on what Beaches and Harbors' staff tells it. He said that approximately half of the Sheriff Department's staff

members understand the boaters' needs and knows the appropriate way to conduct themselves. The other half needs to understand that not every boater is trying to cheat the system. Some boaters are stuck and have limited financial resources and the current situation in the Marina is critical.

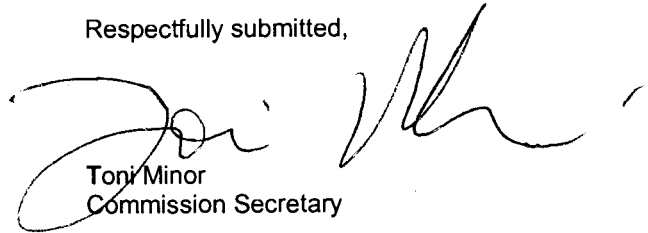
Mr. Rigopoulos said that he obtained a list of Marina anchorages from staff at Beaches and Harbors, but will possibly obtain a slip at King Harbor.

Chairman Searcy requested staff to report at the June meeting regarding Chace Park's transient dock policy. He said that staff needs to clarify what the transient docks are for and whether there is a policy that states boaters with a prior marina eviction are unable to use the transient docks at all. Chairman Searcy added that, if there is such a policy, staff should check whether it is enforceable.

**8. ADJOURNMENT**

Chairman Searcy adjourned the meeting at 11:06 p.m.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Toni Minor', is written over the typed name and title.

Toni Minor  
Commission Secretary

# LOS ANGELES COUNTY SHERIFF'S DEPARTMENT

## MARINA DEL REY STATION

### PART I CRIMES- MAY 2004



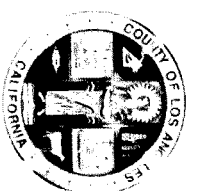
Part I Crimes	MARINA AREA (RD'S 2760- 2763)	EAST END (RD'S 2764- 2768)
Homicide	0	0
Rape	0	1
Robbery: Weapon	1	5
Robbery: Strong-Arm	0	0
Aggravated Assault	0	4
Burglary: Residence	4	15
Burglary: Other Structure	3	1
Grand Theft	7	2
Grand Theft Auto	2	10
Arson	1	0
Boat Theft	0	0
Vehicle Burglary	1	11
Boat Burglary	0	0
Petty Theft	6	3
Total	25	52

**Note-** The above numbers may change due to late reports and adjustments to previously reported crimes.

**Source-** LARCIS, **Date Prepared** – May 6, 2004  
**CRIME INFORMATION REPORT - OPTION B**



**LOS ANGELES COUNTY SHERIFF'S DEPARTMENT  
MARINA DEL REY STATION  
PART I CRIMES- MAY 2004**



	West Marina 2760	East Marina 2761	Lost R.D. 2762	Marina Water 2763	Upper Ladera 2764	County Area 2765	Lower Ladera 2766	Windsor Hills 2767	View Park 2768	TOTALS
Homicide					1					0
Rape							1		4	6
Robbery: Weapon		1								0
Robbery: Strong-Arm					1		1	1	1	4
Aggravated Assault						1	2	6	6	19
Burglary: Residence		3	1				1			4
Burglary: Other Structure				3			2			9
Grand Theft	3	1			2		1	3	6	12
Grand Theft Auto										1
Arson		1								0
Boat Theft							1	4	7	13
Vehicle Burglary	1									0
Boat Burglary										
Petty Theft	3	1	2				1	1	1	9
REPORTING DISTRICTS	7	10	3	3	4	1	10	15	25	78
TOTALS										

**Note-** The above numbers may change due to late reports and adjustments to previously reported crimes.

**Source-** LARCIS, Date Prepared - May 6, 2004  
CRIME INFORMATION REPORT - OPTION B

# **MARINA DEL REY HARBOR ORDINANCE SEAWORTHY & LIVEBOARD COMPLIANCE REPORT**

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	<b>April</b>	<b>May</b>
<b>Liveaboard Permits Issued</b>	2	2
<b>Warnings Issued (Yellow Tags)</b>	0	0
<b>Notices to Comply Issued</b>	0	0

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**Total Reported Liveboards By Lessees - 547**

**Total Liveaboard Permits Issued - 439**

**Percentage of Compliance - 80**

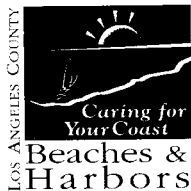
No new Warnings were issued in the month of May.

No new Notices to Comply were issued in the month of May.

No new citations were issued for violations of 19.12.1110 L.A.C.C. (liveaboard permit) or 19.12.1060 L.A.C.C. (unseaworthy vessel) in the month of May.

## **Number Of Unseaworthy Vessels Demolished**

To date, one hundred and sixty nine (169) vessels have been removed from the marina for disposal. Currently, eleven (11) vessels are ready for disposal and eight (8) are awaiting lien sale procedures.



*To enrich lives through effective and caring service*



June 3, 2004

Stan Wisniewski  
Director

Kerry Gottlieb  
Chief Deputy

TO: Small Craft Harbor Commission  
FROM: *Kerry Gottlieb - Silverstrom for*  
Stan Wisniewski, Director

SUBJECT: **ITEM 3b - MARINA DEL REY AND BEACH SPECIAL EVENTS**

### **MARINA DEL REY**

#### **MARINA DEL REY FOURTH OF JULY FIREWORKS**

The traditional fireworks extravaganza over the main channel in Marina del Rey will be presented on Sunday evening, July 4, starting promptly at 9:00 p.m. This event is sponsored by the Los Angeles County Department of Beaches and Harbors. The fireworks are choreographed to patriotic music, which will be broadcast by radio station KXLU 88.9 FM in sync with the pyrotechnic display. The music will be relayed over loudspeakers in Burton Chace Park for those watching there. Parking is available in County lot #4 on Mindanao Way and County lot #5 on Bali Way for a reasonable fee. Fireworks may also be viewed at Fisherman's Village and throughout Marina del Rey.

For more information call: Marina del Rey Visitor Center at (310) 305-9545.

#### **THE MARINA DEL REY SUMMER CONCERT SERIES 2004**

Presented by Arrowhead Mountain Spring Water

July 8 – August 28

7:00 p.m. – 9:00 p.m.

Waterside at Burton Chace Park

13650 Mindanao Way

The new season of Marina del Rey Summer Concerts begins with the first Thursday classical concert on July 8, with a concert by the Marina del Rey Summer Symphony conducted by Maestro Frank Fetta, featuring 19-year-old violin prodigy, Lindsay Deutsch, playing "Chaconne" by John Corigliano, featured in the recent film, "The Red Violin." She will also play the haunting "Meditation" from the opera "Thais" by Massenet. The orchestra will play de Falla's, "Three-cornered Hat Suite No. 2," Chadwick's "Symphonic Sketches: Noel, Jubilee," and Dvorak's "Symphony No. 9 (From The New World)."

The first Saturday pops concert is scheduled for July 17 and will feature jazz sensation Rene Marie and her trio.

Parking is available in County lot #4 on Mindanao Way and County lot #5 on Bali Way for a reasonable fee.

For more information call: Marina del Rey Visitor Center at (310) 305-9545.

**FISHERMAN'S VILLAGE WEEKEND CONCERT SERIES**

Sponsored by Pacific Ocean Management, LLC  
All concerts from 2:00 p.m. – 5:00 p.m.

**Saturday, June 12**

Michael John & The Bottom Line, playing Jazz

**Sunday, June 13**

Dirk K., playing Jazz

**Saturday, June 19**

Scott Sechman & Dave James, playing Acoustic Funk

**Sunday, June 20**

Eric Vincent & The Diamond Cutters, Tribute to Neil Diamond

**Saturday, June 26**

The Angerson's, playing Pop & Rock

**Sunday, June 27**

Hammersmith, playing Jazz

For recorded information call: (310) 823-5411.

**BEACH EVENTS**

**VENICE BEACH**

1800 Ocean Front Walk

Friday, June 11 from 2:00 p.m. – 6:00 p.m.

Saturday, June 12 and Sunday, June 13  
9:00 a.m. – 11:00 a.m.

Small Craft Harbor Commission  
Marina del Rey and Beach Special Events  
June 3, 2004  
Page 3

The Core Tour Sports and Music Festival is a high-energy, extreme sports event. Free admission. The Tour will have several different activities and competitions that will entertain and thrill the spectators of each community and interest. Be sure to stop by the Arrowhead Mountain Board Dirt Bash and cheer on athletes in the "Arrowhead Best Trick Contest" and the "Arrowhead It's Better Up Here High Air Contest."

For more information call: Sandbox Marketing at (949) 218-7861 or visit events website at [www.coretour.com](http://www.coretour.com)

SW:tm



*To enrich lives through effective and caring service*



**Stan Wisniewski**  
Director

**Kerry Gottlieb**  
Chief Deputy

June 2, 2004

TO: Small Craft Harbor Commission  
FROM: *Kerry Gottlieb - Silverstein for*  
Stan Wisniewski, Director

**SUBJECT: ITEM 5a – Approve the Release of Request for Proposals for Improvements to Parcel 83S – Marina del Rey**

Item 5a on your agenda pertains to the Request for Proposals for Improvements to Parcel 83S, which is located at the northeast corner of Fiji Way and Admiralty Way. The attached Board letter contains background information on our request for authorization to release the Request for Proposals.

Your Commission's endorsement of our recommendation to the Board of Supervisors, as contained in the attached letter, is hereby requested.

SW:pw

Attachment



*To enrich lives through effective and caring service*



**Stan Wisniewski**  
Director

**Kerry Gottlieb**  
Chief Deputy

June 15, 2004

The Honorable Board of Supervisors  
County of Los Angeles  
383 Kenneth Hahn Hall of Administration  
500 West Temple Street  
Los Angeles, California 90012

Dear Supervisors:

**APPROVE THE RELEASE OF REQUEST FOR PROPOSALS  
FOR IMPROVEMENTS TO PARCEL 83S IN MARINA DEL REY  
(4th DISTRICT)  
(3 VOTES)**

**IT IS RECOMMENDED THAT YOUR BOARD:**

Approve and authorize the release of the attached Request for Proposals for Improvements to Parcel 83S.

**PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION**

The proposed Request for Proposals (RFP) is intended to seek competitive proposals for development of Parcel 83S in Marina del Rey in connection with efforts to facilitate a development that promotes visitor-serving uses.

In furtherance of the goals of the second-generation development contemplated in the Marina del Rey Asset Management Strategy (AMS) adopted by your Board on April 15, 1997, the Department has issued six previous development solicitations for the second generation of development in Marina del Rey. The proposed development of improvements on this parcel will continue to further the goal of creating more visitor-serving uses, a focus of both the AMS and the Marina del Rey Local Coastal Program (LCP).

The development opportunity for this County-owned parcel is the construction and operation of visitor-serving improvements, on a stand-alone basis or in conjunction with the

The Honorable Board of Supervisors  
June 15, 2004  
Page 2

adjacent parcel's uses, consistent with the subject parcel's specific designation for "Visitor-Serving/Convenience Commercial" as set forth in the LCP.

It is expected that responses to this RFP process may include proposals to provide visitor-serving improvements, such as parking, landscaping, retail, restaurant and/or other public facilities. As stated in the RFP, the proposal that will be recommended to your Board for award of an exclusive right to negotiate for an unsubordinated ground lease will be required to include a landscaped park-like perimeter on both the Fiji Way and Admiralty Way sides of the parcel.

#### Implementation of Strategic Plan Goals

This recommendation is consistent with the County's Strategic Plan Goals of Fiscal Responsibility and Service Excellence in that the resulting lease will provide County a stream of revenue and the visitor-serving improvements, to be constructed by the proposer, will further the aims of AMS.

#### FISCAL IMPACT/FINANCING

This is a solicitation effort to obtain proposals that will maximize County revenue and accomplish the planning of Marina del Rey improvements on the subject parcel. A full financial analysis will accompany any subsequent project recommended to your Board. Other than budgeted consultant's costs to evaluate responses to the RFP, no County funds are presently contemplated to finance any costs associated with this request.

#### FACTS AND PROVISIONS/LEGAL REQUIREMENTS

##### **RFP Parcel**

This RFP pertains only to one County-owned parcel, Parcel 83S. There is no lease agreement in effect on the parcel. The site contains approximately 13,982 square feet of land area and no water area and is improved with one bench and seven by-permit-only,

The Honorable Board of Supervisors  
June 15, 2004  
Page 3

non-public parking spaces. The parcel lies within Development Zone 9 as defined by the LCP, and is designated for visitor-serving commercial uses.

### **Land Use Designation and Entitlements**

It is expected that the successful proposer will benefit from the priority given to visitor-serving uses in Marina del Rey. Because the land area of the subject parcel is comparatively small, it is expected that sufficient entitlements will be available for a significant range of projects. Depending on the land use and scope of development proposed for the site, an LCP amendment may nonetheless be necessary to accomplish a given project plan, albeit unlikely. In issuing this RFP, the County will make no representation that any entitlements will, in fact, be obtained or that, in obtaining them, developers may not be subject to a wide range of conditions and requirements not now provided in the LCP.

The Small Craft Harbor Commission is scheduled to consider the Director's recommendation that your Board approve and authorize the release of the attached RFP at its meeting of June 9, 2004. We will advise your Board of the Commission's recommendation prior to your consideration of this request. The solicitation has been approved as to form by County Counsel.

### **ENVIRONMENTAL DOCUMENTATION**

This development solicitation does not authorize any development of the involved County property, let alone the development of a particular project. The County is not committed to approving any new development through the release of this solicitation. In the event the solicitation yields a proposed development plan, the appropriate environmental documentation will be prepared when sufficient information regarding the proposed project is known in conjunction with the County's land use entitlement process. Any selected developer will be required to apply for and obtain all necessary land use and coastal development permits.

The Honorable Board of Supervisors  
June 15, 2004  
Page 4

### **CONTRACTING PROCESS**

An evaluation committee, selected by the Director of the Department, will review proposals submitted in response to the RFP and recommend to the Director a developer with whom to pursue exclusive negotiations in the event it determines a proposal is worthy of pursuit. The Director will then request your Board to authorize exclusive negotiations with a recommended developer for a lease or lease option to design, finance, develop and operate the project.

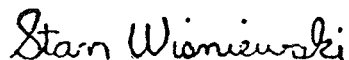
### **IMPACT ON CURRENT SERVICES (OR PROJECTS)**

There is no current impact on other projects and services due to the issuance of the RFP.

### **CONCLUSION**

Approve and authorize release of the attached RFP and forward one adopted copy of this Board letter to the Department.

Respectfully submitted,



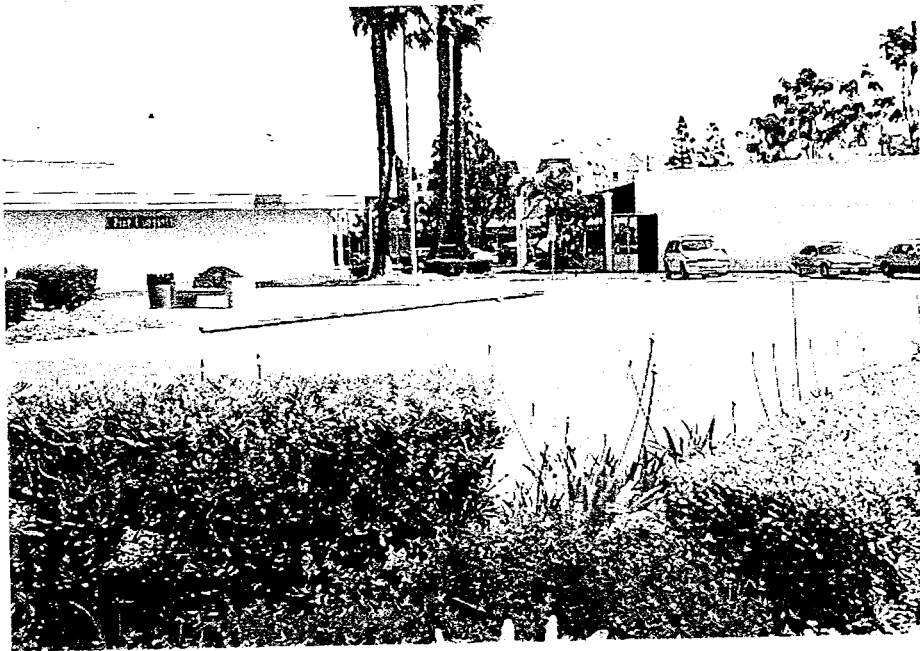
Stan Wisniewski  
Director

Attachments (1)

c: Chief Administrative Officer  
County Counsel

RM:pw

# REQUEST FOR PROPOSALS FOR IMPROVEMENTS TO PARCEL 83S MARINA DEL REY



( SAMPLE IMAGE – FOR ILLUSTRATIVE PURPOSES ONLY )

ISSUED BY COUNTY OF LOS ANGELES  
DEPARTMENT OF BEACHES AND HARBORS  
MARINA DEL REY, CALIFORNIA  
JUNE 2004

## EXECUTIVE SUMMARY

<b>COUNTY OBJECTIVES</b>	<p>The County of Los Angeles seeks proposals for the ground lease and development of improvements to Parcel 83S, Marina del Rey. The primary objective of this project is the provision of visitor-serving uses. A further objective of this project is the provision of a landscaped park-like perimeter on the Fiji Way and Admiralty Way sides of the parcel. Information about this solicitation may be obtained from the Los Angeles County Department of Beaches and Harbors at <a href="http://beaches.co.la.ca.us">http://beaches.co.la.ca.us</a></p> <p>The County manages Marina del Rey pursuant to the goals and objectives set forth in the Marina del Rey Local Coastal Program ("LCP") and the Marina del Rey Asset Management Strategy ("AMS"). The successful proposer is responsible for recognizing the goals of both the LCP and AMS.</p>
<b>SITE DESCRIPTION</b>	<p>Parcel 83S (the "Project Site") is situated on the northeast corner of the intersection of Fiji Way and Admiralty Way, which is located in the eastern portion of Marina del Rey. The Project Site contains approximately 0.321 acres of land area. Current improvements are limited and consist of a paved parking area, public bench and related hardscape and minor landscaping treatments. Although the parcel contains curb cuts at its Admiralty Way and Fiji Way perimeters, current access to the site is obtained principally via two driveways situated on the adjacent Parcel 50. Due to the limited distance between the existing parcel curb cuts and the intersection of Admiralty and Fiji Ways, proposers are advised to seek guidance from the County's Departments of Public Works (Traffic Division) and Regional Planning to determine whether intended uses will be able to obtain appropriate vehicular access.</p>
<b>DEVELOPMENT OPPORTUNITY</b>	<p>The County's preferred use of the site is for visitor-serving improvements. The improvements proposed may be constructed on a standalone basis or in conjunction with visitor-serving uses on adjacent or nearby parcels. The LCP allows uses consistent with the development category "Visitor Serving/Convenience Commercial." These terms are defined in the LCP, and include various uses.</p>
<b>TRANSACTION STRUCTURE</b>	<p>This Request for Proposals process may culminate in the exclusive right to negotiate an unsubordinated ground lease providing for minimum rents and percentage rents to the County. The County will not subordinate its fee interest or rental payments.</p>

---

**SUBMISSION  
SCHEDULE  
AND FORMAT** The proposer shall prepare one original and nine copies (except large-scale drawings and exhibits, if included in the package) of a Proposal Package in 8.5" x 11" format. Proposals must be organized following the Submission Requirements section and must include at least the requested information. Responses must be submitted not later than 5:00 p.m. on Monday, July 19, 2004.

**PROPOSER'S  
CONFERENCE** Monday, June 28, 2004 at 9:00 a.m.  
Burton W. Chace Park Community Building  
13650 Mindanao Way  
Marina del Rey, California

Attendance at the Proposer's Conference is not mandatory for proposers; however, questions regarding this Request for Proposals and the overall project will only be addressed at this meeting or for a limited time afterward in follow-up correspondence that will be shared with all proposers on record. An information packet containing additional background materials is available for purchase from the Los Angeles County Department of Beaches and Harbors.

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## 1. PROJECT OVERVIEW

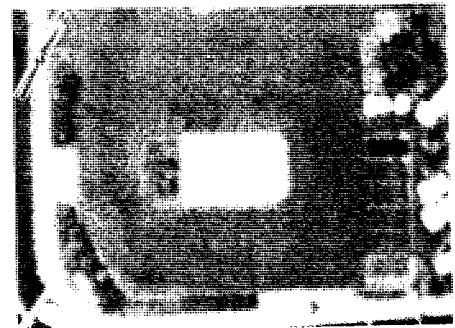
### 1.1 THE DEVELOPMENT OPPORTUNITY

The County of Los Angeles (the "County"), through its Department of Beaches and Harbors ("DBH" or the "Department"), seeks proposals for the ground lease and development of improvements to Parcel 83S, Marina del Rey. The County seeks a development team that will provide the expertise, experience and financial ability to plan, construct and operate visitor-serving uses. A further objective of this project is the provision of a landscaped park-like perimeter on the Fiji Way and Admiralty Way sides of the parcel.

The Marina del Rey Land Use Plan (the "LUP"), a component of the Los Angeles County Local Coastal Program (the "LCP"), allows uses consistent with the development categories "Visitor Serving/Convenience Commercial." These terms are defined in the LUP, and include a range of visitor-serving uses such as amusement rides, boat rentals, ice cream shops, parking lots, restaurants and tourist information centers, as well as a variety of convenience commercial uses and other uses subject to additional permits.

### 1.2 PROJECT SITE

Parcel 83S (the "Project Site") is situated on the northeast corner of the intersection of Fiji Way and Admiralty Way, which is located in the northeast quadrant of Marina del Rey. As shown in Figure 1, Parcel 83S comprises the Project Site, which contains 0.321 acres of land area. Current improvements are limited and consist of a paved parking area, public bench and related hardscape and minor landscaping treatments.



**Figure 1.**  
**Parcel Included in Project Site:**  
**Parcel 83S**

The aerial photograph in Figure 2 illustrates the vicinity of Parcel 83S. The parcel is accessible from the northbound lane of Admiralty Way and the westbound lane of Fiji Way. Although the parcel contains curb cuts at its Admiralty Way and Fiji Way perimeters, current access to the site is obtained principally via two driveways situated on the adjacent Parcel 50. Due to the limited distance between the existing parcel curb cuts and the intersection of Admiralty and Fiji Ways, proposers are advised to seek guidance from the County's Departments of Public Works (Traffic Division) and Regional Planning to determine whether intended uses will be able to obtain appropriate vehicular access. Figure 3 includes a diagram of the vicinity of the Project Site.

### 1.3 PROPOSAL EVALUATION AND SELECTION

The County will consider all proposals against the standards generally set out in this RFP and, to the extent competing proposals are submitted, will judge proposals against each other. Proposers are expected to set forth a plan that maximizes utilization of the Project Site while at the same time providing the minimum buildout requirements as set forth in Section 3.

Respondents are further encouraged to submit multiple proposals if they have more than one possible development solution. The County will also entertain proposals that incorporate parcel(s) adjacent to the Project Site, provided the proposer can demonstrate control of such parcel(s). While respondents are encouraged to propose a level of development that is most suited to the success of the overall project,

priority consideration will be given to plans that both meet minimum buildout requirements and maximize utilization of the Project Site. The County will enter into negotiations for a ground lease with the selected developer.

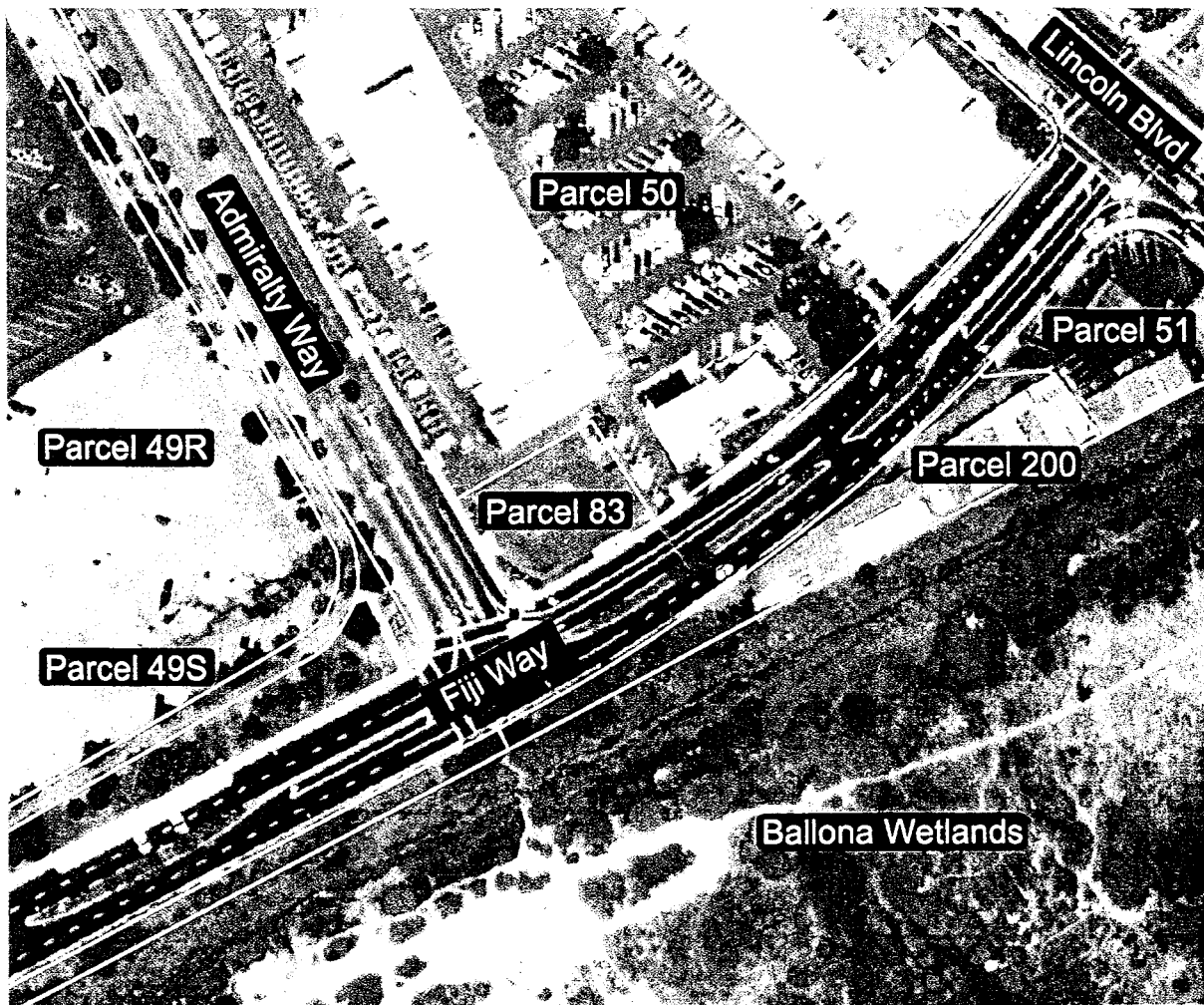


Figure 2. Aerial Photograph of Vicinity of Project Site

#### 1.4 PROJECT CONSIDERATIONS

The County manages Marina del Rey pursuant to the goals and objectives set forth in the Marina del Rey Local Coastal Program ("LCP") and the Marina del Rey Asset Management Strategy ("AMS"). The successful proposer is responsible for recognizing the goals of both the LCP and AMS. Among these goals, and the focus of this RFP, is improved site utilization. Through the provision of additional land area, the County expects to facilitate the process of redevelopment in Marina del Rey.

In furtherance of AMS goals, the County contemplates a number of planned redevelopment projects and related public improvements in the vicinity of the Project Site. The scope, funding and schedule of these potential redevelopment projects and public improvements are in various stages of analysis, evaluation and negotiation, and thus details are not yet finalized. Nonetheless, a number of these potential improvements may complement development on the Project Site and therefore discussions of these projects are included for informational purposes.

## 1.5 TRANSACTION STRUCTURE

The County will accept proposals for a long-term unsubordinated ground lease. Length of lease term will be considered based upon circumstances and demonstrated need for lease term length as it relates to project viability. However, the lease term shall in no event exceed the statutory limit (99 years), and the Department considers 60 years as the reasonable upper limit of recommendable new leases for most projects in the Marina.

## 1.6 SUBMISSION SCHEDULE, FORMAT AND COUNTY CONTACT

Responses are due no later than 5:00 p.m. Pacific Time on Monday, July 19, 2004. The application process and application contents are discussed herein, principally in Sections 3, 4 and the Appendix.

Submissions are to be delivered to the County Contact:

Delivery Address:

County of Los Angeles  
Department of Beaches and Harbors  
Attn: Alexander E. Kalamaros, CCIM  
1383S7 Fiji Way  
Marina del Rey, CA 90292

Contact Information:

Phone: 310.577.7961  
Fax: 310.821.6345  
Email: [akalamar@dbh.co.la.ca.us](mailto:akalamar@dbh.co.la.ca.us)  
Internet: <http://beaches.co.la.ca.us>

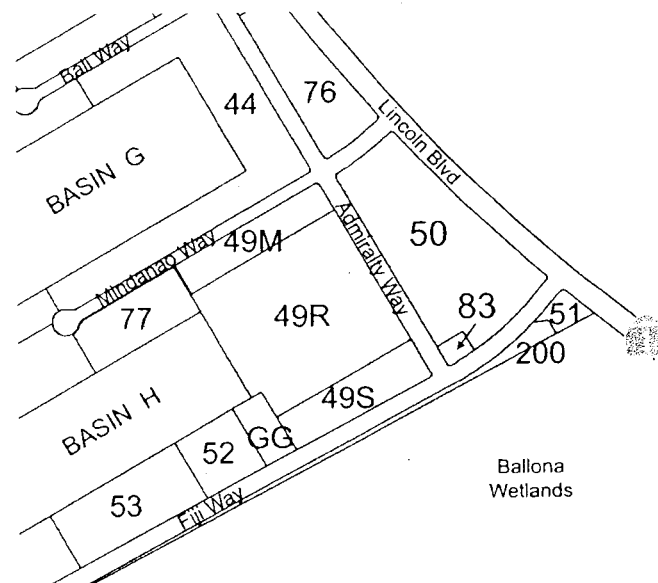


Figure 3.  
Diagram of Project Site

## 2. BACKGROUND AND CONTEXT

### 2.1 GENERAL BACKGROUND

Marina del Rey is located on the Pacific coast within metropolitan Los Angeles (Figure 4). The County of Los Angeles (the "County") owns the land and water area that comprises Marina del Rey proper. Marina del Rey (the "Marina") is situated in an unincorporated area of the County. In the late 1950s the Marina was dredged and in the 1960s the Marina was improved with landside and water developments. Most of this land and water area has been developed under ground leases administered by the Department.

Development in the Marina is governed by the LCP, which was certified by the California Coastal Commission in 1996. The Board of Supervisors of the County adopted the AMS in 1997 to reflect the County's objectives and goals in seeking to maintain and enhance the Marina's reputation as a premier recreational boating harbor with attractive residential, shopping and dining facilities and overnight accommodations. In 2001, the County established the Marina del Rey Convention and Visitors Bureau to promote the general guidelines and programs for achieving the visitor-serving objectives of the LCP.

### 2.2 ONGOING REDEVELOPMENT EFFORTS

The Department has previously issued several other solicitations in connection with the first phase of Marina redevelopment. These solicitations have resulted in negotiations for over twenty new development and renovation projects with a value in excess of one billion dollars that collectively total 3,577 apartments, 1,641 hotel rooms and 1,544 boat slips. Of the total 3,577 new apartments, 1,656 units will replace apartments that are approximately thirty-years old, and the remaining 1,921 units will constitute new additions to existing parcels. The 1,544 new boat slips will replace 2,052 slips that are approximately thirty-years old, and will utilize the same water area but will provide larger slip sizes, on average, reflecting the demand of the boating community and will provide improved boater amenities. Additionally, a limited amount of new retail, office, restaurant and storage space has been proposed, together with a new 2+ acre park on the Marina's west side.



Figure 4. Location of Marina del Rey

## 2.3 OVERVIEW OF MARINA DEL REY

Marina del Rey is one of the largest small craft harbors under unified management in the United States. Of the total approximately 800 acres within the Marina, there are approximately 150 acres of water area and approximately 250 acres of land area under long-term unsubordinated ground leases. Marina del Rey is the home of over 50 major commercial leaseholds and over 300 subleases. Major components of Marina del Rey include the following:

- Approximately 5,300 boat slips;
- Approximately 6,000 rental apartment units;
- 600 luxury condominiums;
- Six hotels with a total of over 1,000 rooms; and
- Approximately 1,000,000 square feet of commercial space including office, retail and restaurants.

## 2.4 OVERVIEW OF ASSET MANAGEMENT STRATEGY (AMS)

In the AMS adopted in 1997 for the Marina, the County addressed some of the critical issues for preserving and enhancing the location's prestigious identity, dealing with second-generation development and ensuring that when the majority of existing Marina leaseholds recycle, the Marina will be a viable, exciting area capable of continuing to produce substantial revenues for the County, while serving the needs of both the recreational boater and the community at large for water-oriented recreation.

The four main elements of AMS are:

- A long-term vision for the Marina that establishes it as a vibrant urban waterfront development;
- Catalytic development projects that will draw people on a regional basis, spur further leasehold development and set a standard for design quality;
- Development mechanisms to encourage leasehold redevelopment proposals consistent with the long-term vision; and
- Other mechanisms to encourage refurbishment and ensure quality maintenance of those leaseholds that will not be redeveloped during the remaining terms of their leases.

There are five characteristics common to successful waterfront developments in the Marina that the County wishes to achieve. These five characteristics are:

- A powerful sense of place;
- An accessible waterfront, both physically and visually;
- An exciting mix of inter-related, water-oriented uses;
- A multi-modal transportation system that facilitates pedestrian activity and alternative forms of travel; and
- A varied, high-quality residential environment.

Consistent with the above goals, creating a sense of place and an enhanced visitor-serving environment are two of the major objectives of this RFP.

## 2.5 LOCAL COASTAL PROGRAM OVERVIEW: INTRODUCTION TO MARINA ENTITLEMENTS

The Marina del Rey LCP governs development in the Marina. The LCP was adopted by the Los Angeles County Board of Supervisors and effectively certified by the California Coastal Commission in 1996. The last comprehensive amendment to the LCP established the potential for a limited amount of additional development within the Marina based on the capacity of local transportation arteries to handle additional traffic. For planning purposes, this additional development potential is allocated among fourteen Development Zones ("DZs") rather than to individual parcels. Aggregate development in the Marina, as well as development within each DZ, is regulated by the allocation of evening (p.m.) peak hour traffic trips.

Information regarding entitlements as set forth in the LCP is presented here for informational purposes only. The LCP specifies maximum buildout, open space requirements, viewshed protection, parking requirements, traffic limitations and other types of entitlement issues. The LCP is available for review at the Marina del Rey Public Library, the DBH office or the Los Angeles County Regional Planning Department ("DRP") and is available for purchase at the DBH office. The LCP may be viewed online at: <http://beaches.co.la.ca.us/bandh/marina/development.htm>

A significant element in the application and development process will be treatment of entitlement issues. A brief overview of LCP/Regional Planning/Coastal Commission Requirements is set forth in Appendix E.

## 2.6 RECENT PRIVATE INVESTMENT IN THE MARINA

There has been a significant amount of recent investment in the redevelopment of leased properties located in the Marina. Since 1990, this investment has resulted in the following projects:

- Construction of the Ritz-Carlton Hotel;
- Remodel of existing guest rooms at the Marina Marriott Hotel;
- Remodel of Dolphin Marina apartments and replacement of anchorage facility;
- Construction of 128 new Panay Way apartment units;
- Remodel of the Del Rey Yacht Club facilities;
- Replacement of 150 existing slips at the California Yacht Club;
- Remodel of existing Bay Club apartments;
- Remodel of the Red Onion Restaurant into FantaSea Yacht Charters;
- Remodel of Charley Brown's Restaurant into Tony P's Dockside Grill;
- Remodel of Reuben's Restaurant into Harbor House Restaurant;
- Remodel and expansion of Shanghai Red's Restaurant;
- Remodel of The Boat Yard to add ship chandlery;
- Construction of a new boathouse for Loyola Marymount University;
- Remodel of interiors, exterior and landscaping of Oakwood Apartments;
- Construction of 1,052 apartments and new boat slips at Parcels 12 and 15 (in progress);
- Construction of 120 new apartments and new boat slips and remodel of 853 existing apartments at Parcels 111/112 (in progress); and
- Construction of 99 new apartments and new boat slips at Parcel 20 (in progress).

## 2.7 MARINA GOVERNANCE

Marina del Rey is situated in an unincorporated portion of Los Angeles County and therefore is under the direct jurisdiction of the County Board of Supervisors (the "Board"). When the Marina was developed, the Board created the Small Craft Harbor Commission ("SCHC") to oversee activities and recommend leases and policy matters to the Board. The SCHC consists of five members appointed by the Board. The SCHC recommends actions regarding Marina del Rey to the Board, which has the power to make decisions and direct activity.

Ongoing administration is the responsibility of DBH, which oversees all County-owned or controlled beaches as well as all land and water area encompassed by Marina del Rey. Within the Marina, DBH manages and administers over 50 ground leases covering hotel, restaurant, office, residential, retail, harbor, anchorage, parking and concession uses. The Department's scope of activities entails significant asset management responsibility due to the size and complexity of the leasehold and concession interests, which it manages. The County's powers and rights in its governmental capacity are not affected by its leasing to proposers or developers in its proprietary capacity.

## 2.8 MARINA CAPITAL PROJECTS

The County and various other agencies responsible for the ongoing administration and improvement of the Marina provide capital improvements to the area's infrastructure. These recent and planned investments provide a significant level of support for new development and include the following:

- The U.S. Army Corps of Engineers (the "Corp") has jurisdiction over the construction of shoreline structures and other activities in the water areas of Marina del Rey. Between 1994 and 1996 the Corps and the County spent \$5.5 million to dredge nearly 300,000 cubic yards of material to maintain the Marina's entrances.
- An additional 700,000 cubic yards of waterway dredging began in 1998 and was completed in 2000 with a total projected cost of \$7.7 million.
- A \$23.5 million project to reinforce all 758 panels of the Marina seawall was completed in 2000.
- The County is currently in the planning process of Phase I implementation of a Marina-wide landscape and lighting redesign of roadway medians and multiple entry parcels.
- The County is currently planning for the widening of Admiralty Way from four to five lanes between Fiji Way and just west of Bali Way and six lanes from just west of Bali Way to Via Marina.
- The County, along with state and regional traffic authorities, is working on plans to extend the Marina Freeway (State Route 90) from its current terminus at Lincoln Boulevard to a point on Admiralty Way near the public library.
- The County is working on the planned expansion of Chace Park to create a public park over ten acres in area after expansion.

### 3. PROJECT DESCRIPTION

#### 3.1 ULTIMATE AIM OF THE IMPROVEMENTS

The ultimate aim of the Parcel 83S Improvements project is to facilitate the overall process of Marina del Rey redevelopment through the provision of added visitor-serving improvements. To the extent possible on this relatively small site, additional aims may include recreation and visitation of the retail, restaurants and public facilities in the immediate vicinity. The successful proposal will make effective use of existing available entitlements. By maximizing connections to the surrounding area, the project will provide a quality project environment while serving to implement the LCP and AMS.

#### 3.2 ILLUSTRATIVE PROJECT PLANS

As shown on the cover page and in Figure 5, the implementation of improvements in the area of the Project Site varies, depending on site conditions and intensity of the proposed use. However, it is expected that the successful proposer will respond to this RFP with a plan for new visitor-serving improvements.

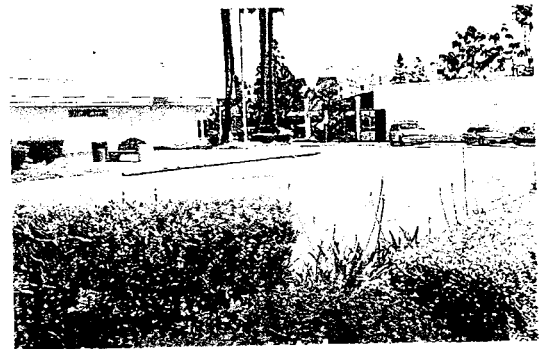


Figure 5. Area of Project Site

Based on preliminary feasibility estimates, it is estimated that the Project Site is suitable for at least nominal buildout. The potential further addition of a landscaped park-like perimeter on the Fiji Way and Admiralty Way sides of the parcel may be possible with a design and site plan that complements planned development in the immediate vicinity. The project is to be designed to serve the needs of both the users of the improvements and visitors to the area.

Figure 6. Minimum Buildout of Project Site

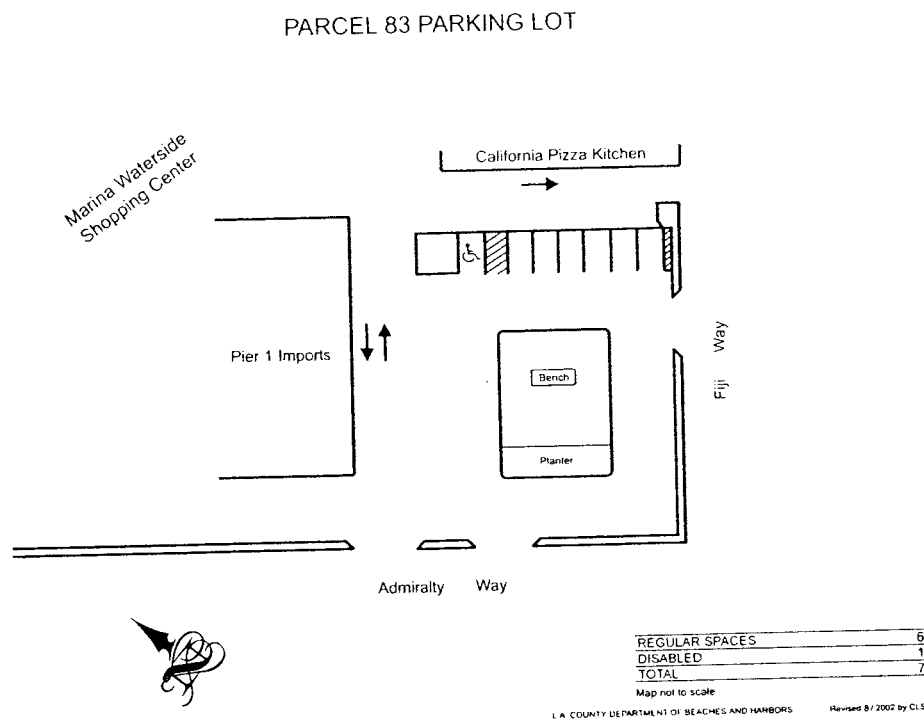
<i>Land Area Only (No Water Area)</i>
<ul style="list-style-type: none"> <li>▪ Provision of visitor-serving improvements and any required related parking</li> <li>▪ Landscaped perimeter treatment</li> </ul>

### 3.4 SITE DESCRIPTION OF PROJECT PARCEL

Figure 7 shows a sketch of the existing improvements on the Project Site. Figure 8 shows the dimensions of the Project Site. A description of the Project Site follows:

- Parcel 83S** is currently a parking lot with a bench and planter. There is no lease agreement in effect on the parcel. The site contains approximately 13,982 square feet of dry lot area. Parcel 83S lies within Development Zone 9 and is designated for visitor-serving commercial uses. Although the parcel contains curb cuts at its Admiralty Way and Fiji Way perimeters, current access to the site is obtained principally via two driveways situated on the adjacent Parcel 50. Due to the limited distance between the existing parcel curb cuts and the intersection of Admiralty and Fiji Ways, proposers are advised to seek guidance from the County's Departments of Public Works (Traffic Division) and Regional Planning to determine whether intended uses will be able to obtain appropriate vehicular access.

Figure 7. Sketch of Existing Improvements on Project Site



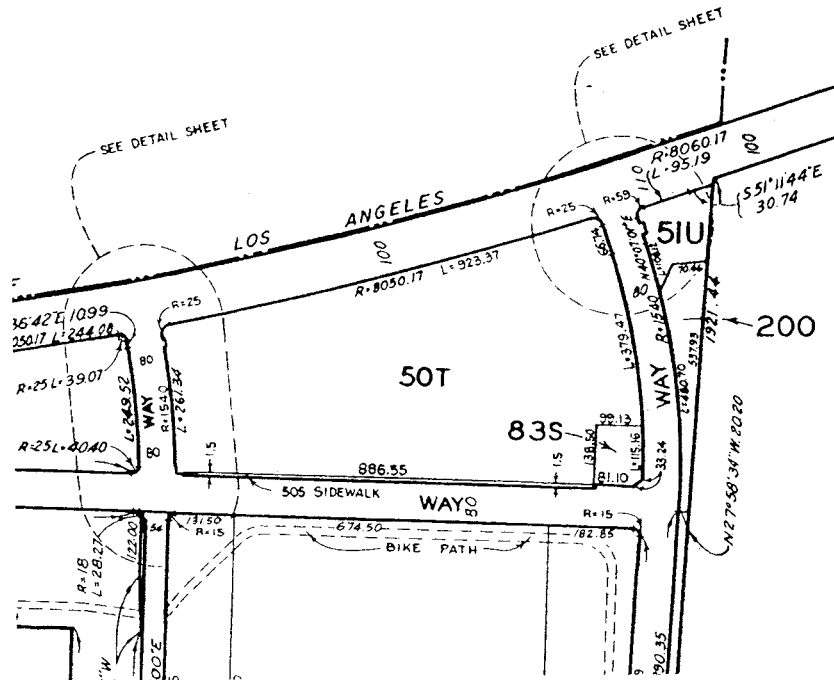


Figure 8. Dimensions of Project Site

### 3.5 DESCRIPTION OF ADJACENT AND NEARBY PARCELS

- **Parcel 50**, also known as Marina Waterside Shopping Center, is located to the north and east of Parcel 83S and is the only parcel that abuts Parcel 83S. Parcel 50 contains approximately three dozen retail spaces housed in three buildings. Portions of this parcel are planned to undergo construction, including the expansion of the anchor tenant's space, the addition of second story façade elements, traffic recirculation and landscaping improvements. Construction is expected to commence as early as Fall 2004. This parcel contains approximately 423,681 square feet of dry lot area.
- **Parcel 49** lies to the west of Parcel 83S, across Admiralty Way. Parcel 49 contains the Marina's public boat launch, as well as public parking, dry-stack storage and a portion of the South Bay Bike Trail. This parcel contains approximately 738,699 square feet of dry lot area and 41,800 square feet of wet lot area.
- **Parcel 200** is located south of Parcel 83S across Fiji Way. Parcel 200 contains a power utility substation and is closed to the public. This parcel contains approximately 25,754 square feet of dry lot area.
- **Parcel 51** lies to the southeast of Parcel 83S across Fiji Way. Currently Parcel 51, situated at the corner of Lincoln Boulevard and Fiji Way, is undergoing redevelopment and is planned to serve as a gateway "parkette" to the Marina. This parcel contains approximately 22,440 square feet of land.
- **Playa Vista Area A** is an area of land that is situated to the south and southwest of Parcel 83S across Fiji Way. This area was recently acquired by the State of California and has been mentioned for use as a State park. Although not open to the public, the area provides a visual attraction to users of the South Bay Bike Trail along Fiji Way, and provides an attraction for birdwatchers and other wildlife enthusiasts.

### 3.6 LOCAL MARKET DESCRIPTION

Situated on the northeast corner of Marina del Rey, Parcel 83S enjoys proximity to the main shopping center and to the only public boat launch in Marina del Rey. The public boat launch parking lot contains approximately 234 automobile spaces and 152 dry slips for boat storage and is the main entry point for the public boating community to the Marina. The Waterside Shopping Center is the largest retail center in the Marina and contains the Marina's only supermarket, generating a high flow of traffic from both the local community and visitors to the Marina.

The South Bay Bike Trail ("SBBT") runs approximately 26 miles, generally along the beach, from a southern point of the Santa Monica Bay near Redondo Beach to the north rim of the Santa Monica Bay in the Pacific Palisades community. SBBT is a major public attraction for bicycle, in-line skating, running, walking and other exercise enthusiasts. As one of the areas major outdoor public amenities, the SBBT draws a large number of visitors to and through the Marina, a number of whom choose to exit and enter at the corner of Admiralty Way and Fiji Way and pass by Parcel 83S in order to stop at the adjacent shopping center.

In Marina del Rey, there are approximately 20 commercial vessels in operation, ranging in capacity from 20 persons to over 200 persons. These commercial vessels provide daily services including sportfishing tours, whale-watching charters, Catalina charters, dinner cruises, special events, and on-the-water film production, among others.

### 3.7 SITE UTILIZATION

The primary land use regulations for Marina del Rey are contained in the LCP, which is comprised of the Marina del Rey Land Use Plan and the Marina del Rey Local Implementation Program. In 1996, the California Coastal Commission and the County of Los Angeles approved a comprehensive amendment to the LCP. Currently, the LCP permits principal uses on the subject Parcel shown in the Appendix.

### 3.8 SUGGESTED GUIDING PRINCIPLES FOR PROJECT DESIGN

Based on the information previously described, including the LCP and the AMS, and a strong desire to create the best possible project, the following principles are suggested for project design, to the extent possible on this relatively small parcel:

- Vision consistent with the AMS and LCP
- Facilities that encourage project use by recreational and commercial visitors
- Emphasis on physical environmental quality
- Secure and comfortable layout

Respondents are also advised that the Department has published a set of design guidelines in draft form that may further inform the design process. However, these draft guidelines have not been approved by the County and are subject to change. The draft guidelines may be viewed online at: <http://beaches.co.la.ca.us/bandh/marina/development.htm>

In addition to these examples of guiding principles, respondents are advised to review Section 5 of this RFP, which includes a brief explanation of the criteria on which proposals will be judged.

### **3.9 AVAILABILITY OF PROJECT ENTITLEMENTS**

Given the parcel size and potential uses, entitlements for the Parcel 83S Improvements project are expected to be available by virtue of the priority given to visitor-serving uses in Marina del Rey. Proposers are advised to consult with the Department, and the County Department of Regional Planning, to determine if sufficient entitlements are available for any proposed project use or use intensity, and in addition, whether the proposed use is within the parameters of the LCP and other relevant regulations.

### **3.10 LCP AMENDMENT**

If an amendment to the LCP is required, additional requirements for regulatory approvals by the Marina del Rey Design Control Board ("DCB"), the County Department of Regional Planning ("DRP"), and the California Coastal Commission ("CCC"), as well as recommendation by the Small Craft Harbor Commission ("SCHC") and approval of the Los Angeles County Board of Supervisors ("BOS") will be needed and, respondents are advised to consult with the Department of Regional Planning to assess the complexity, scope and length of time it may take to achieve the approvals needed to complete the project. Respondents should consider a time estimate in accordance with requirements of the various regulatory bodies including the DCB, SCHC, DRP, BOS and CCC.

### **3.11 NO AVAILABILITY OF PUBLIC FINANCING**

While some form of public-private partnership is anticipated, the County may reject proposals that require public financial participation. Respondents should clearly specify any projected contingency, need or desire for public financing related to submitted proposals.

### **3.12 PROPOSALS THAT INCLUDE PARCELS REQUIRING LEASE EXTENSIONS**

In cases where a respondent chooses to submit a proposal that includes one or more existing leaseholds, additional requirements will apply. These requirements are covered in detail in the Appendix.

### **3.13 CONFIDENTIALITY**

Details of the proposals submitted in response to this RFP will remain confidential and will not be released to others prior to the Director's recommendations being presented to the Small Craft Harbor Commission. To preserve confidentiality, some information may be marked "CONFIDENTIAL" or "PROPRIETARY" and the County will recognize such designation to the extent permitted under the Public Records Act (see the Notice to Proposers Regarding the Public Records Act" set forth fully in Appendix).

## 4. OVERVIEW OF TERMS

The County will only accept proposals for a long-term, unsubordinated ground lease. Following are terms and conditions, which should be incorporated in the proposals.

### 4.1 RENT

Base minimum rent shall be generally equivalent to 75% of projected rent generated from percentage rent. Percentage rents shall be based on gross revenue per a schedule established in each ground lease, subject to adjustment over the term of the lease. In the following Figure 9, examples of percentage rents by use category are presented. Rent proposals will be evaluated within the context of uses that are proposed and/or the relationship to adjacent or complementary uses.

**Figure 9.**  
**Examples of Percentage Rents by Use Category for Properties in Marina del Rey**

<i>Use Category</i>	<i>Range</i>		<i>Prevailing Rate</i>
	<i>Low</i>	<i>High</i>	
Boat Storage (landside)	10.0%	27.0%	20.0%
Hotel/Motel Rooms	7.5%	8.0%	7.5%
Restaurant (Average of Food & Beverage)	3.0%	5.0%	3.5%
Apartment	9.0%	12.5%	10.5%
Slips	20.0%	33.0%	25.0%
Retail	1.5%	4.0%	2.0%
Office	7.5%	12.5%	11.0%
Vending/Telephone Commissions	25.0%	25.0%	25.0%
Cocktail Lounge	10.0%	10.0%	10.0%
Commissions - Service Enterprises	20.0%	20.0%	20.0%
Valet Parking Fees	5.0%	7.5%	7.5%
Parking Fees	20.0%	20.0%	20.0%
Miscellaneous sales	1.0%	5.0%	5.0%

#### 4.2 ADDITIONAL LEASE TERMS

The County will require that the following additional terms, among others, be incorporated into any ground lease:

- Participation by the County in the proceeds from the transfer/sale of the leasehold interest based upon the higher of: (a) a fixed percentage of the sale price, or (b) a fixed percentage of net profit from the sale;
- Participation by the County in proceeds from the refinancing of the leasehold interest based upon a fixed percentage of refinance proceeds not reinvested in the leasehold or used to retire existing financing;
- Late payment charges for any type of rent or payment due to the County including a fixed percentage of the amount due plus interest;
- Provisions for County assignment consent and recapture rights;
- Periodic adjustment of minimum and percentage rents to market levels;
- Disclosure of beneficial ownership;
- Maintenance standards and liquidated damages for failure to adhere to these standards;
- General liability insurance coverage and periodic insurance requirement readjustment;
- Security deposit; and
- Fund for removal of improvements at termination of lease.

#### 4.3 PROPOSER'S RESPONSIBILITIES

The selected development team will be responsible for payment of all costs and expenses in connection with the project including, but not limited to: costs associated with securing necessary entitlements and environmental documentation; ground clearing, site preparation and construction of new buildings; maintenance; underground utilities; insurance and taxes; permits and inspection fees; costs and mitigation fees associated with the development; and architectural, environmental, engineering and other related work. Developer will be responsible for all brokerage fees, if any. The County will not pay any broker's fees or finder's fees.

The selected developer or development team will be required to:

- Select the development team;
- Obtain all necessary entitlements and permits;

- Coordinate, manage and facilitate the review of the project by the DCB, the Regional Planning Commission, the County's Board of Supervisors, the California Coastal Commission and the local community, as well as assist DBH in responding to community issues or concerns that may arise;
- Manage the work effort of the entire development team, the architect, the general contractor, and construction manager (if any) during construction;
- Subsequent to completion, manage the daily operations of the commercial facilities in a professional manner to maintain high standards of operational quality, including contractual agreements with experienced operators if necessary to do so; and
- Market the development.

In summary, the selected development team will be required to address the multitude of issues and complete the multitude of tasks required to develop and operate the proposed development.

#### 4.4 PROPERTY CONDITION/SITE CONDITIONS-RESTRICTIONS

Environmental investigations, tests, reports or remediation through various governmental agencies may be required for redevelopment of the Project Site. A due diligence period, if necessary, will be provided during negotiations between the County and the selected developer. All costs of any such investigation will be borne by the selected developer. Rights of review and approval of the results of such investigations, if required, will be given to the selected developer. If the selected developer, acting in good faith, disapproves the results of such investigation, negotiations with the County may be terminated prior to the end of the due diligence period. If not terminated, the responsibility for clean-up of contamination or toxic materials will rest with the selected developer and will not be the responsibility of the County.

Although the parcel contains curb cuts at its Admiralty Way and Fiji Way perimeters, current access to the site is obtained principally via two driveways situated on the adjacent Parcel 50. Due to the limited distance between the existing parcel curb cuts and the intersection of Admiralty and Fiji Ways, proposers are advised to seek guidance from the County's Departments of Public Works (Traffic Division) and Regional Planning to determine whether intended uses will be able to obtain appropriate vehicular access.

#### 4.5 ENTITLEMENT ISSUES

A significant element in the application and development process will be treatment of entitlement issues. A brief overview of LCP/Regional Planning/Coastal Commission Requirements is set forth in Appendix E.

*Respondents should be aware that respondents might be subject to a wide range of conditions not contemplated in this RFP in connection with obtaining entitlements for a proposed project. As circumstances dictate, DBH will participate in DCB, LCP, Regional Planning and other necessary regulatory proceedings, however, while the County is a necessary co-applicant, sponsoring and obtaining LCP amendments and/or other regulatory approvals is the sole responsibility of the successful proposer.*

## 4.6 APPLICATION PROCESS

### 4.6.1 Detailed Response Information

Proposers must submit complete responses by 5:00 p.m. Pacific Time on Monday, July 19, 2004 in the form set forth in Appendix H, "Contents of Proposal."

The proposal should be sent to the County Contact as described in Section 1, to the following address:

County of Los Angeles Department of Beaches and Harbors  
Attn: Alexander E. Kalamaros, CCIM  
1383S7 Fiji Way  
Marina del Rey, CA 90292

### 4.6.2 Response Schedule

Release of RFP	June 15, 2004
Developer's Orientation (9:00 AM at Burton W. Chace Park Community Building, Marina del Rey)	June 28, 2004
Proposals Due	July 19, 2004
County schedules interviews	To be determined
Evaluation Committee issues recommendation to Director	To be determined
Director recommends selection of entity with which to negotiate exclusively	To be determined
Small Craft Harbor Commission reviews Director's recommendation	To be determined
Board of Supervisors selects entity with which to negotiate exclusively	To be determined

## 5. PROPOSAL SUBMISSION AND REVIEW

### 5.1 DEVELOPER'S ORIENTATION CONFERENCE

Prior to submitting a proposal in response to this RFP, interested potential respondents should attend the Developer's Orientation Conference. At this meeting, DBH staff will provide an overview of this RFP. DBH's economic and legal consultants, as well as representatives from the Regional Planning Department and the Department of Public Works will be invited to answer questions regarding this RFP. If the applicant chooses to proceed with a project, the proposal submittal process outlined in Sections 4 and 5 and the Appendix should be followed. Proposals in response to this RFP will be due to the County no later than the submittal deadline set forth in Section 1.6.

Notwithstanding a recommendation of a department, agency, individual, or other entity, the Board of Supervisors retains the right to exercise its judgment concerning the selection of a proposal and the terms of any resultant agreement, and to determine the proposals, if any, which best serve the interests of the County. The Board is the ultimate decision-making body and makes the final determinations necessary to arrive at a decision to award, or not award, a new lease or lease extension.

### 5.2 PROPOSAL PACKAGE

Proposers must submit 10 copies, in 8.5" x 11" three-ring loose-leaf binders with up to five graphic exhibits in 11" x 17" format, folded to fit within the 8.5" x 11" three-ring format. **All pages must be numbered.** The sealed envelope must state "RFP Submittal." Proposals submitted by electronic mail or facsimile will not be accepted. Proposals are due by 5:00 p.m. Pacific Time on the submittal deadline date set forth in Section 1.6 to the County Contact as described in Section 1. DBH reserves the right to request additional information during the RFP review period.

### 5.3 CONDITIONS AND LIMITATIONS

This RFP does not represent an offer or commitment by the County of Los Angeles to enter into an agreement with a proposer or to pay any costs incurred in the preparation of a response to this request. The responses and any information made as part of the responses will not be returned to proposers. This RFP and the selected proposer's response to this RFP, may, by reference, become a part of any formal agreement between the proposer and the County resulting from this solicitation.

The proposer shall not collude in any manner or engage in any practices with any other proposer(s) that may restrict or eliminate competition or otherwise restrain trade. Violation of this instruction will cause the proposer's submittal to be rejected by the County. The prohibition is not intended to preclude joint ventures or subcontracts that are identified in the proposal.

All proposals submitted must be the original work product of the proposer. The copying, paraphrasing, or otherwise using of substantial portions of the work product of another proposer is not permitted. Failure to adhere to this instruction will cause the proposal to be rejected.

The County has sole discretion and reserves the right to reject any and all proposals received with respect to this Request for Proposals and to cancel the Request for Proposals at any time prior to entering into a formal lease agreement.

The County reserves the right to request clarification of the RFP or additional data without changing the terms of the RFP.

#### 5.4 DEVELOPMENT COMPONENTS

Please identify each of the major components of the proposed development, *e.g.* retail, parking, etc. Proposals must include detailed, parallel information for each of these components.

#### 5.5 SUBMITTAL OF ALTERNATE PROPOSALS

Respondents may desire that alternative RFP proposals on a given parcel(s) receive consideration in the event their primary proposal is rejected. The County will consider such provided the respondent's alternate proposal is submitted in a separate document and is labeled with the subtitle "ALTERNATE PROPOSAL." Alternate Proposals:

- Must be completely self contained;
- May not include references to any outside documents; and
- Must be turned in on the same submission schedule as all other proposals.

#### 5.6 OVERVIEW OF CONTENTS OF PROPOSAL

In general, all proposals will have nine required sections as shown below and in the order as set forth in the Appendix. The sections are set forth here in summary format.

- SECTION 1 - DEVELOPMENT CONCEPT
- SECTION 2 - PROJECT TIMETABLE AND CRITICAL ENTITLEMENT ISSUES
- SECTION 3 - COST ESTIMATE
- SECTION 4 - FINANCIAL PROPOSAL AND PROJECTIONS
- SECTION 5 - DEVELOPMENT TEAM INFORMATION, PAST EXPERIENCE (FOR EACH COMPONENT) AND FINANCIAL INFORMATION
- SECTION 6 - STATEMENT OF FINANCIAL QUALIFICATIONS AND RESPONSIBILITY OF DEVELOPER
- SECTION 7 - DISCLOSURE OF BENEFICIAL OWNERSHIP
- SECTION 8 - OTHER REQUIRED FORMS
- SECTION 9 - ADDITIONAL REQUIREMENTS FOR PROPOSALS WHICH INCLUDE LEASE EXTENSIONS

#### 5.7 EVALUATION COMMITTEE

The evaluation of the proposal responses will be conducted by an "Evaluation Committee" selected by the Director of Department of Beaches and Harbors. The Evaluation Committee may include DBH staff members, representatives of other County agencies and departments and/or non-County personnel who may have demonstrated expertise in pertinent development fields.

The Evaluation Committee will rank and recommend proposals to the Director who will, in turn, make his recommendations to the Small Craft Harbor Commission ("SCHC") and to the Board of Supervisors. Neither the Director, nor the SCHC, nor the Board is bound by the recommendations of the Evaluation Committee. The Los Angeles County Board of Supervisors has the ultimate authority and responsibility for the selection of a developer, if any, for proposed development on the Project Site and any related parcels.

## 5.8 EVALUATION CRITERIA

The County's primary evaluation criteria are: (1) revenue enhancement, (2) implementability, (3) implementation of AMS, including consideration of impact on and/or enhancement of usability by Marina visitors, (4) upgrading the east side of the Marina, and (5) creativity. The objective is to enhance the Marina as a desirable location and provide a cohesive theme for new private development and public facilities as well as to improve the County's revenue flow. Implementability means that the County must be satisfied that the responding development team has the ability to fully complete the project in an expeditious manner. The County will consider:

- Entitlement risk;
- Financial risk;
- Income enhancement, within the context of the uses proposed for the site and with relation to any proposed combination with adjacent or nearby sites/uses;
- Creativity and quality;
- Design and construction capability;
- Project management capability;
- Property management capability;
- Successful marketing and operating experience of the developer and, if applicable, the operator of the project;
- The marketing image, financial strength and management systems of, if applicable, the operator of the project;
- Extent to which existing lessee has complied with all terms and conditions of its lease;
- Compatibility with the goals and objectives of the Marina del Rey Asset Management Strategy, including pedestrian orientation and visitor-serving objectives, and related non-monetary public benefits; and
- Experience in public/private projects.

## 5.9 EVALUATION PROCESS

The initial review will compare all proposals for compliance with the submission requirements. Any proposals with significant omissions may be rejected and the proposers will be notified of their failure to comply with the requirements of the RFP process. The County reserves the right to request that proposers bring their submissions into compliance within a very short time period after notification.

A detailed, point-by-point comparison will be made of all complete proposals. Requests for clarification may be sent to certain proposers. Proposers may be asked to attend an interview by the Evaluation Committee.

Based on the evaluation criteria, the proposals will be rated by the Evaluation Committee, which will recommend the selected proposer to the Director, who will in turn make his recommendations to the SCHC and the Board of Supervisors.

## 5.10 FINAL AWARD BY BOARD OF SUPERVISORS

Notwithstanding a recommendation of a department, agency, commission, individual, or other person, the Board of Supervisors retains the right to exercise its judgment concerning the selection of a proposal and the terms of any resultant agreement, and to determine which proposal, if any, best serves the interests of the County. The Board is the ultimate decision-making body and makes the final determinations necessary to arrive at a decision. The Board reserves the right to reject any and all proposals.

## APPENDIX A

### DEPARTMENT OF BEACHES AND HARBORS

#### POLICY STATEMENT

##### Leasehold Term Extension - Marina del Rey

The County's policies and official goals/objectives with regard to granting lease extensions to Marina del Rey leaseholders are:

1. Redevelopment and making the properties economically and physically competitive (e.g., competitive with the new hotels, condominiums, slips and retail buildings in the new Playa Vista project and other new Westside projects). Redevelopment will be rigidly defined to differentiate it from deferred maintenance, refurbishing or extensive redecoration.
2. Redevelopment of leasehold uses to ensure long-term economic viability of the improvements, increased County revenue, and enhancement of public facilities.
3. It is understood that the Local Coastal Plan (LCP) restricts some leaseholds from redeveloping to higher density, or modifying existing land use. The County will consider sponsoring, in concert with the affected leaseholders, an amendment to the LCP when:
  - The proposed project and amendment will trigger redevelopment.
  - Redevelopment may be an upgrade of facilities such as providing larger units, not just higher density.
  - The proposed redevelopment will enhance the County's revenue stream and create public facilities.
  - All proposed leasehold LCP amendments have been sufficiently reviewed and processed appropriately which will include public hearings. The County is desirous of combining all LCP amendments into one planning amendment and environmental assessment, but at appropriate intervals may consider sponsoring additional amendments when they will ensure leasehold viability and increased County rent.
4. Receipt of fair consideration by the County for the extension (in addition to fair market rent).
  - The County will require a lease extension fee equal to the value of granting the extension.
  - The County will require a guarantee that redevelopment will commence promptly and within a specific, prescribed time frame.
  - Redevelopment of a leasehold interest satisfactory to the County will entitle the lessee to a rent credit of part of the lease extension fee for a limited, prescribed period of time. Assurance of the County's continuity of annual rental income flow will be paramount in determining the timing of the partial credit.

- The purpose of the extension fee and redevelopment requirements is to provide each lessee with an incentive to redevelop.
  - Only where redevelopment is not physically or legally possible, will the County consider alternative requirements for lease extension if the leasehold's current use meets the objectives and permitted uses of regulatory agencies and, in the County's judgment, the facilities meet appropriate building codes and economic and physical viability is ensured during the extended lease term.
5. Ensuring payment of fair market rents commensurate with the new value of the lease including its extension.
  6. Securing County financial participation in sale, assignment or refinancing of leasehold interests.
  7. Payment for County administrative costs associated with lease extension and other lease related costs.
  8. Staging of rental arrangements and physical redevelopment to ensure continuity of County rental income flow.
  9. Retention of 50 percent of the additional funds resulting from lease extension to upgrade physical infrastructure of the Marina.
  10. Processing a master LCP amendment covering as many parcels as possible.

The department understands that if a lease term extension is granted, certain property or possessory interest taxes may be increased due to reassessment of the leasehold. The role of the department is to act as a traditional landlord and it will only take into account fair economic rent and the direct rental revenue paid to the County. The County will not adjust rent or in any way agitate or modify future rent adjustments due to higher property or possessory interest taxes that may result from a lease extension.

Certain regulatory procedures (i.e., LCP requirements) must be resolved prior to entering into a binding agreement for lease extension containing higher leasehold land use density or leasehold land use modifications.

## BASIS FOR POLICY STATEMENT

### 1. Purpose

The purpose of this Policy Statement is to provide a standard basis for discussing lease term extensions and to ensure that the County will receive fair economic value for such extension and for its leased property within Marina del Rey.

It is anticipated that lease term discussions on Marina del Rey leaseholds will be requested by various lessees as the remaining term in the original lease declines. These requests may arise because of the lessees' desire to refinance, sell, assign, or redevelop the leasehold. In some cases there may be an insufficient remaining term of the lease to maximize these desires.

Redevelopment is considered by the County to be the primary justification for a lease term extension.

### 2. Basic Assumptions

#### 2.1 Policy Assumptions

- Redevelopment of the leaseholds should be coupled with any lease extension commitments.
- Environmental assessment may be required.
- The County is not obligated to agree to lease extensions for any or all lessees.
- No redevelopment increasing leasehold land use density or leasehold land use modifications will occur without mitigating traffic options such as a bypass.
- Lease extension discussions will be expensive and time consuming to the County.
- A preponderance of leaseholds will not be able to significantly intensify use or density under the land use provisions of the current LCP.
- The Assessor will reassess the property with an extension.

### 3. Prerequisite for Lease Extension

2.2 The lease term extension must be tied to a commitment acceptable to the Director and Board of Supervisors to redevelop the property. A major purpose of this policy is to ensure that the improvements will be modernized and of sufficient quality to remain attractive, competitive, and physically and economically viable during the extended term of the lease.

- County must conclude that redevelopment is feasible under existing regulatory control on a case-by-case basis or that land use modification can be accomplished through an amendment of the LCP. In either case, the County will require fair consideration for a lease extension.
- Redevelopment must enhance the County's income stream, and public facilities.

2.3 No long term extension containing the higher leasehold land use density or leasehold land use modifications will be offered until the Marina del Rey bypass or other traffic mitigation measures are approved by the appropriate regulatory agencies.

### 4. Amendment to the Local Coastal Plan (LCP)

4.1 The County will consider sponsoring an amendment to the LCP.

If the County is successful in its attempts to amend the LCP, part of the lease extension fee paid by the lessee may be credited against future rent when redevelopment occurs.

### 5. Conditional Parcels

These policies may be withheld or modified with respect to those parcels for which other policies or lease extension amendments have been executed, those properties which have recently been redeveloped and meet appropriate building codes and quality standards which ensure viability of the facilities or meet objectives of regulatory agencies.

CRITERIA CONTEMPLATED FOR INCLUSION IN REQUESTING LEASE  
EXTENSION

MARINA DEL REY

1. All requests for lease term extension are to be submitted in writing to the Director of the department and shall include documents describing the lessee's existing financial statement and condition, value of the property, purpose for lease term extension, construction scheduling for redevelopment, and total construction costs and economic projections.

2. Application Fee

Upon application for the lease extension, in addition to any other compensation payable such as retroactive rent, increases in base rent, etc., the lessee shall pay to the County a single application fee for its administrative costs, associated with review of the project for economic feasibility, environmental assessment and legal assistance as well as County staff time.

3. Economic Terms

3.1 Minimum Rent

Minimum rent shall be adjusted periodically based on prior total annual rent paid to the County.

3.2 Fair Market Rental Rates

A revision of all percentage and minimum rent to reflect fair market value as of date the extension is granted. Where applicable, the payment of retroactive rent will be made by the lessee based on the new fair market rental rate percentages. The newly adopted arbitration clause clarifying dispute resolution mechanisms will be added to those leases not already including it.

3.3 Lease Extension Fee

The County will receive an extension fee commensurate with the value of granting the extension.

3.4 Participation in Sale or Transfer of the Leasehold

The County will participate in the proceeds from the sale or transfer of leasehold interest so as to: 1) assure adequate compensation for administrative costs incurred by the department; and 2) share in profits from these leasehold sales or transfers.

3.5 Participation in Refinancing

The County will receive an appropriate share of proceeds from refinancing, which are not used for leasehold improvements in the Marina.

### 3.6 Administrative Costs

In addition to the above economic terms, the lessee shall agree to pay for various offsetting or special administrative costs including, but not limited to:

3.61 Environmental studies.

3.62 Late rental payment penalties, including audit deficiencies.

3.63 Increased security deposits.

3.64 Increased minimum rental payments.

3.65 Increased County insurance requirements, including business interruption insurance.

3.66 Costs for County lease assignment reviews.

### 4. Time Frame for Lease Extension

Will be tied to resolving transportation requirements established in the LCP.

## APPENDIX B

Adopted 3/21/95

### PROCESS FOR MANAGING LEASE EXTENSION PROPOSALS

The Board of Supervisors of the County of Los Angeles (Board) has approved an amendment to the Marina del Rey Local Coastal Plan (Amended Plan) allowing for an increase in development density in Marina del Rey. The Amended Plan divides the Marina into 14 Development Zones (DZs), each containing several leaseholds, with development potential being allotted by DZs, rather than by individual parcels. The Amended Plan must be reviewed and approved by the California Coastal Commission (CCC) to become effective.

In order to encourage timely redevelopment during this process, the Department of Beaches and Harbors (Department) is willing to enter into negotiations for extending the terms of current ground leases with interested lessees and/or other interested parties, but will not submit a "Memorandum of Understanding for Lease Extension" (MOU) to the Board until after the CCC's adoption of the Amended Plan. Two or more lessees may compete for development potential within a given DZ.

All lease extension negotiations will require the payment of an application fee to fully cover the Department's costs to analyze the applicant's proposal. Once general agreement is reached, an MOU will be prepared for submission to the Small Craft Harbor Commission (SCHC) for review and to the Board for approval. The MOU will outline the basic terms to be further negotiated as a part of a lease extension amendment (Lease Extension Amendment).

Upon Board approval of this MOU, the lessee will pursue a Coastal Development Permit (CDP) and other entitlements through the Department of Regional Planning (DRP). Once these entitlements are issued, the Department will enter into good faith negotiations with the lessee for a Lease Extension Amendment that will be based upon the terms set forth in the MOU.

In order to provide an opportunity for all interested parties, the Department will require each applicant to abide by the following process:

## PROCESS

### Informal Meeting

Prior to submitting a formal proposal, the lessee should request meetings with the Department and the DRP's "One-Stop" processing center. The Department will outline the County's financial/planning goals for Marina del Rey, and the DRP will clarify whether or not the proposed project is within the parameters of the Amended Plan and will help the lessee understand the various steps and procedures required by the permit process. No fees will be assessed by either department for these initial meetings.

### Proposal Submission

If the lessee chooses to proceed with the Project, ten copies of a proposal shall be submitted to the Department. The proposal shall be responsive to the Board-approved Marina del Rey Lease Term Extension Policy (Attachment 2). In addition, the applicant shall submit:

- A. A description of the proposed project.
- B. A description of the entitlements required to complete the project. If the required entitlements are in excess of the development potential for the DZ, the applicant shall detail its plan for securing increased entitlements. It should be noted that if an applicant's proposal requires further substantial amendments to the Amended Plan, an MOU will not be forwarded to the Board prior to approval of these additional amendments to the CCC.
- C. The basis for leasehold valuation.
- D. Evidence of financial and physical feasibility of the proposed project.
- E. The Department's initial fee of \$10,000 as a deposit against its costs of reviewing, negotiating and preparing the MOU and Lease Extension Amendment documents. This fee is payable upon submission of a proposal. Additional funds may be required to ensure that all of the Department's costs are recovered. Any unexpended funds will be refunded to the applicant.

### MOU Negotiation

Once the proposal is received, the Department will review the proposal and coordinate the appropriate meeting(s) between the lessee and County staff and/or its consultants to clarify the terms of the proposal – primarily its financial, planning, and legal aspects. Upon clarification, the Department will negotiate in good faith to reach agreement on an MOU that the Department can recommend to the SCHC and the Board.

Notice to Other Lessees

Upon receipt of any proposal requesting development potential permitted under the Amended Plan, the Department will notify all other lessees in the affected DZs that such a proposal for use of that potential has been received. If any other lessee has an interest in submitting a competing proposal, the Department should be notified in writing within 30 days so that the Department can schedule initial meetings with the interested party.

It is the intent of the Department to select the best proposal for use of the development potential within each DZ. Therefore, the Department may negotiate simultaneously with two or more lessees seeking the same entitlement within the same DZ, but only one MOU will result from such negotiations.

Rejected Proposals

If the Department rejects a proposal, it will forward its comments to the Board by memorandum, with copies going to the SCHC and the applicant. The applicant's proposal and a summary of analyses performed by staff or outside consultants will be attached to the memorandum.

Process After MOU Execution By the Board

After the Board and applicant have executed an MOU, the applicant should secure a CDP and all required entitlements. Once all permits and entitlements are secured, the Department will enter into good faith negotiations on a Lease Extension Amendment based on the MOU. The proposed Lease Extension Amendment will be forwarded to the SCHC for its review and to the Board for its consideration. If the Department and lessee cannot agree upon the terms of the Lease Extension Amendment, or if the Board rejects such Lease Extension Amendment, the Department may reopen negotiations with other interested parties.

Parcels Not Currently Under Long Term Leases

After the Amended Plan is approved by the CCC, the Department will seek lessees for development of certain Marina del Rey parcels not currently under long-term leases. If the same development potential within a DZ is sought by a prospective as well as a current lessee, the Department will recommend an MOU to the SCHC and the Board with the party, which it determines offers the best overall proposal to the County.

## APPENDIX C

### **Coordination with Lease Extension Proposals**

#### **DEFINITION OF A "COMBINED PROJECT"**

Certain proposals may include plans for combining RFP parcels and existing leaseholds into a single development project. Such a project is termed a "Combined Project." A Combined Project is a project that aggregates one or more RFP parcels together with one or more other parcels with existing leases into a single, unified development project. In order to clearly distinguish proposals that contain a Combined Project, all respondents submitting a Combined Project must label any response document with the subtitle "COMBINED PROJECT."

#### **ADDITIONAL REQUIREMENTS FOR PROPOSALS THAT INCLUDE LEASE EXTENSIONS**

If applicable, please provide the following information for proposals that include development on parcels for which a lease extension is requested.

- Proposed extension fee, which should be calculated in accordance with current County policy. For further explanation, please refer to Item 4 of the document titled POLICY STATEMENT: Leasehold Term Extension - Marina del Rey, incorporated as Appendix A.
- Detailed plan for any existing structures that are to remain or are to be rehabilitated, including assurances that the leasehold will maintain a strong competitive position in the market for these existing or rehabilitated facilities for the duration of any extended lease.
- Lease extensions and associated new leases must have a common expiration date.
- Rent structure on retained or reconstructed improvements, if any.
- Evidence of site control: if proposing entity is in any way different from current lessee, even if lessee is a partial owner, please provide a copy of any contractual arrangement as well as the amount and character of consideration to current lessee.
- County Recovery of Lease Extension Costs

The County will recover its processing costs and costs of any required appraisal in accordance with the provisions of AMS and its adopted lease extension policies. For further explanation, please refer to the document titled Process for Managing Lease Extension Proposals, dated 3/21/95 and incorporated as Appendix B.

#### **SINGLE, UNIFIED PROPOSALS MUST INCLUDE BOTH RFP AND RELATED LEASE EXTENSION DATA**

Respondents submitting a Combined Project are not required to submit separate RFP and lease extension proposals and should file a single, unified proposal.

While respondents should submit a single, unified proposal for their Combined Project and thereby eliminate duplicating information that overlaps in the RFP and lease extension proposal, respondents must assure that all necessary project and financial data are included.

The following checklist identifies key sections in the RFP document and related lease extension information that will assist the respondent in assembling the required information.

- Appendix A, Policy Statement: Leasehold Term Extension – Marina del Rey
- Appendix B, Process for Managing Lease Extension Proposals
- Appendix C, Coordination with Lease Extension Proposals
- Related lease extension information, namely:
  - a) Identification of leased properties
  - b) Proposed ownership and operation
  - c) Lease extension terms proposed
  - d) Summary of key elements in associated response to RFP

#### **RESPONSIBILITY FOR LEASE EXTENSION DOCUMENTATION**

While an effort has been made in this document to identify the major technical elements needed in the response to this RFP, all lease extension respondents should read all applicable documents in their entirety and are responsible for meeting all requirements set forth in the County Lease Extension Policy, which is included as an attachment to this RFP.

#### **TIMING OF LEASE EXTENSION EXPIRATION**

Lease extensions and associated new leases must have a common expiration date.

#### **TREATMENT OF RETAINED LEASEHOLD IMPROVEMENTS**

As a general rule, the County expects full redevelopment of all leaseholds for which lease extensions are granted or development proposals are awarded. Neither existing land nor water improvements are to be retained. All existing improvements, whether situated on parcels subject to this RFP or on adjacent or nearby parcels as a part of a Combined Project response to this RFP, should be completely replaced with new or fully reconstructed improvements.

However, if any existing structures are to remain, the respondent must provide the same detailed information for each class of retained improvements. Any proposal to retain leasehold improvements must explain how the respondent plans to assure the County that these structures will remain competitive for the full duration of the lease term.

#### **SUBMITTAL OF ALTERNATE PROPOSALS**

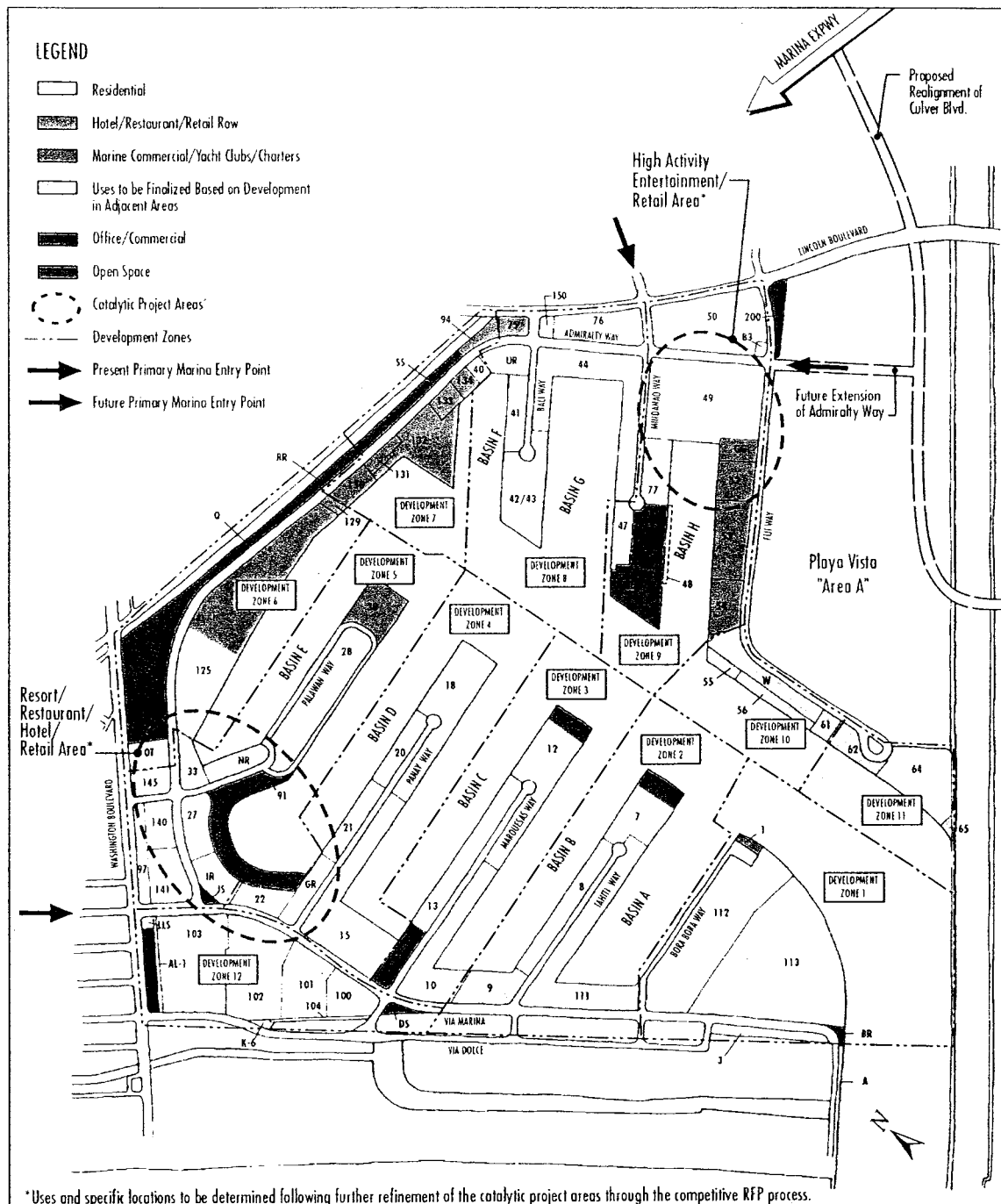
Respondents may desire that alternative RFP proposals on a given parcel(s) receive consideration in the event their Combined Project is rejected. The County will consider such provided the respondent's alternate proposal is submitted in a separate document and is labeled with the subtitle "ALTERNATE PROPOSAL." Alternate Proposals:

- Must be completely self contained;
- May not include references to any outside documents; and
- Must be turned in on the same submission schedule as all other proposals.

## APPENDIX D

### Asset Management Strategy (AMS) Map

## Marina del Rey Asset Management Strategy Land Use Designations and Development Zones



\* Uses and specific locations to be determined following further refinement of the catalytic project areas through the competitive RFP process.

Note: Per the Local Coastal Program, all new projects located on waterfront parcels shall provide public pedestrian promenades adjacent to bulkheads. Development Zone 13 contains only the parkway along Fiji Way. Development Zone 14 contains parcels 51 and 200. Development Zones 13 and 14 are not diagrammed above.

02/13/01

## APPENDIX E

### Entitlement Matters

#### Overview of Marina del Rey Entitlements

A significant element in the application and development process may be treatment of entitlement issues, if modification of existing entitlements through an LCP amendment is required. A brief overview of LCP/Regional Planning/Coastal Commission Requirements is thus set forth below.

*Respondents should be aware that respondents might be subject to a wide range of conditions not contemplated in this RFP in connection with obtaining entitlements for a proposed project. As circumstances dictate, DBH will participate in LCP, Regional Planning and other necessary regulatory proceedings; however, while the County is a necessary co-applicant, sponsoring and obtaining LCP amendments and/or other regulatory approvals is the sole responsibility of the successful proposer.*

The March 1996 LCP Amendment for Marina del Rey marked several changes in the land use regulation of the Marina. Broadly speaking, these changes addressed four critical issues. They are as follows:

- (1) Height limitation zones were established to limit development on individual parcels;
- (2) View corridor requirements were established so that views of the water would be preserved;
- (3) Entitlements for additional development were, with only a few exceptions, allocated among a series of 12 Development Zones (DZs) rather than assigned to individual parcels; and,
- (4) Aggregate development in the Marina as well as development within each DZ was regulated by the allocation of p.m. peak hour traffic trips with a total of 2,750 such traffic trips being allocated to all additional development within the Marina. The allocation of trips and traffic planning was the primary factor in using DZs as a device for allocating additional entitlements.

#### Prospective Entitlement Processing

Proposals that are fully consistent with the existing designations and regulations contained in the LCP will require review by the Design Control Board for design features, as well as issuance of a Coastal Development Permit and all other normal ministerial and other reviews and approvals associated with obtaining a building permit and other code compliance. However, depending on the specific nature of the proposal, other discretionary land use entitlements, such as a Conditional Use Permit, may be required. Any project that requires a change in the LCP will require an LCP amendment. Prior discussions with representatives of the Los Angeles County Regional Planning Department familiar with the LCP indicate that projects requiring the interchange or movement of entitlements from adjacent DZs may not present the same challenge in achieving approvals as may be required for more extensive changes. Land use changes to marine commercial uses, which are likely the emphasis of any changes involved in the project, are likely to be viewed favorably in light of Coastal Commission policies so long as high priority uses (e.g. boating, public parking, etc.) are protected or relocated. The process by which such

amendments would be processed is outlined below and involves approval by both the California Coastal Commission and the County of Los Angeles.

### **Outline of General Entitlement Process**

- Review by DBH Design Control Board
- Prepare Application(s) for Entitlements including Coastal Development Permit, if necessary
- Submit to Los Angeles County Regional Planning Department
- Environmental and Permit Review Process
- Public Hearings at Los Angeles County Regional Planning Commission
- Planning Commission Decision
- Additional Public Hearing/Board of Supervisors Decision (if required)
- Additional Public Hearing/Coastal Commission Decision (if required)
- Additional Review by DBH Design Control Board

### **County Role in Seeking Modifications to Zoning or LCP**

Selected applicants with proposal concepts that require amendments to current zoning and/or the LCP will have the responsibility for obtaining such amendments. The County, in issuing this RFP, makes no representations that such modifications will in fact be obtained or that, in obtaining them, the developer may not be subject to a wide range of conditions and requirements not described in the LCP.

DBH will make available its best understanding of the origins of the policies embodied in the current LCP and zoning and prior interpretations of these policies in connection with earlier entitlement processing, and will, to the extent that DBH does not see any conflict with its long term asset management growth objectives, consent to and support the required applications in the entitlement process. In addition, DBH will identify key staff members with whom to consult at both the California Coastal Commission and the Los Angeles County Department of Regional Planning.

Any assistance provided by the County in its proprietary capacity shall be without prejudice to exercising its powers and rights in its governmental capacity.

### **LCP/Regional Planning/Coastal Commission Requirements**

The RFP references the requirements regarding entitlements imposed by the LCP, including the required reviews by the County's Design Control Board, Regional Planning Department, reviews associated with code compliance and building permit issuance and the involvement and review by the California Coastal Commission in appropriate circumstances.

The RFP makes it clear that applicants are responsible for obtaining all necessary entitlements and permits from appropriate County and/or state agencies and that any proposal that requires an LCP amendment should be discussed with a representative of the Regional Planning Department familiar with the LCP.

The provisions of the LCP regarding allocation of entitlements, view corridor requirements, building height limitations and limitations on both aggregate development in the Marina and development within each DZ are also discussed and an outline of the general entitlement process is presented.

In addition, applicants should be aware that the LCP, planning agencies and other state, regional and/or local authorities might impose a variety of other conditions and/or fees related to proposed development projects. In appropriate cases, these matters may include, but are not limited to the following:

- Traffic impact fees
- School impact fees to Los Angeles County Unified School District
- Fish & Game Department fees
- Mitigation monitoring fees
- Sewer impact fees
- Park impact fees
- Hostel impact fees (hotel/motel development)

The LCP also imposes an "Improvement Phasing Schedule for Internal Category 1 Improvements" which provides that certain specified road improvements must occur in phases coinciding with new development so that no new development is occupied before construction of improvements which would mitigate the same amount of impact such development has on traffic within Marina del Rey.

In addition, the LCP imposes an "Improvement Planning Schedule for certain Sub-regional Traffic (Category 3) Improvements". In general, these provisions require that if the traffic trips generated by new or intensified Marina development, along with other previously approved development, exceed 50% of the total anticipated additional external trips to be generated by new or intensified Marina development, additional development that generates external trips shall not occur until certain traffic improvements which mitigate those trips has been approved and funded by the appropriate agencies.

To date, only minimal new development has been fully approved. However, a number of new development proposals are either in negotiation and/or have entered the entitlement process. If a substantial number of the projects currently in negotiation are eventually granted entitlements at their maximum requested levels, the 50% limit may be attained and any new projects that may generate additional external trips will not be permitted to move forward until the above reference traffic improvements have been approved and funded.

The requirements discussed in the preceding two paragraphs relating to required Category 1 and Category 3 traffic improvements are independent of other LCP requirements and all new developments, regardless of their status relating to the 50% threshold or other traffic improvement or phasing requirements, are still subject to all provisions regarding payment of traffic impact fees and other appropriate conditions and/or fees relating to proposed projects.

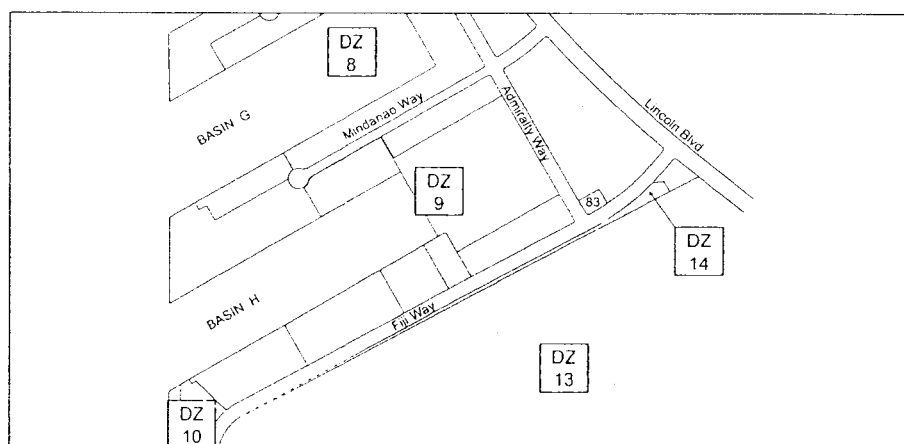
Potential proposers are advised to consult with Regional Planning Department representatives familiar with the LCP in order to assess the terms and conditions which may be imposed upon construction and occupancy of proposed development and for advice regarding any permits, fees or other requirements which may impact their projects.

## Development Zones Affected by the Proposed Project

Depending on the proposed development program, the amount of entitlements necessary to complete a proposed project may vary. As shown in Figures E-1 and E-2 below, one or more development zones may be impacted by the proposed project.

**Figure E-1**

<i>Alternative Scenario</i>	<i>Development Zones Potentially Affected</i>
83S	Mindanao DZ-9
Nearby parcels	Possibly: Bali DZ-8 Fisherman's Village DZ-10 North Shore DZ-13 Fiji Way DZ-14



**Figure E-2.**

### Development Zones Potentially Affected

## Promenade Requirements on Project Site

The LCP requires that a 28-foot wide pedestrian promenade be provided and maintained along all bulkheads in Development Zone 9, which contains Parcel 83S. However, this requirement does not apply to Parcel 83S, as Parcel 83S does not contain any water area or bulkheads.

## Height Limits and View Corridor on the Project Site

As shown in Figure E-3, and in the LCP, site-specific development guidelines limit the height of the Parcel 83S Improvements project to 45 feet.

**Figure E-3. Height Limits on Parcel 83S**

<i>Parcel</i>	<i>Height Limit – Base Case (20 percent view corridor)</i>	<i>View Corridor Bonus Available?</i>	<i>Height Limit – Maximum Case (40 percent view corridor)</i>
Parcel 83S	45 feet	No	45 feet

## Land Use Designation, Total Area and Entitlement Matters Relating to Project Site

As shown in Figure E-4 below, the total project area consists of approximately 0.321 acres of land area, with no water area, for a total area of approximately 0.321 acres. The current zoning for Parcel 83S is designated as "Visitor-Serving/Convenience Commercial."

**Figure E-4. Existing Land Use Designation (Zoning) of Parcel 83S**

<i>Parcel</i>	<i>Land Use Designation</i>	<i>Land Area</i>	<i>Water Area</i>	<i>Total Area</i>
83S	Visitor-Serving/ Convenience Commercial	13,982 sf (0.321 acres)	0 sf (0.0 acres)	13,982 sf (0.321 acres)

### Existing Facilities /Potential Site Restrictions

There is presently one bench and seven permit-only, non-public parking spaces (6 regular parking spaces and 1 disabled parking space) on the Project Site. The provision of parking on this parcel has been restricted and is not otherwise available to the public, and therefore is not subject to LCP requirements for on-site replacement. Although the parcel contains curb cuts at its Admiralty Way and Fiji Way perimeters, current access to the site is obtained principally via two driveways situated on the adjacent Parcel 50. Due to the limited distance between the existing parcel curb cuts and the intersection of Admiralty and Fiji Ways, proposers are advised to seek guidance from the County's Departments of Public Works (Traffic Division) and Regional Planning to determine whether intended uses will be able to obtain appropriate vehicular access.

### Potential Public Amenities on the Project Site

The County envisions improvements to the Project Site that will add visitor-serving uses to Marina del Rey. To this end, it is expected that related hardscape and landscape treatments would be provided in addition to the planned improvements and related parking. In addition, any facilities necessary to conform to the Americans with Disabilities Act ("ADA") will be required, thereby encouraging the use of the facility by the most diverse population possible.

The County further envisions that a landscaped park-like perimeter on the Fiji Way and Admiralty Way sides of Parcel 83S may be feasible in connection with the improvements proposed. To the extent that further improvements are possible, respondents may wish to consider public amenities that would serve the needs of visitors to Marina del Rey. Such features have the potential to increase the attractiveness of the project to both public users and regulatory agencies charged with project review.

### Availability of Draft Design Guidelines

Respondents are also advised that the Department has published a set of design guidelines in draft form that may further inform the design process. However, these draft guidelines have not been approved by the County and are subject to change. The draft guidelines may be viewed online at: <http://beaches.co.la.ca.us/bandh/marina/development.htm>

## APPENDIX F

### Aerial Photograph of Marina del Rey



## **APPENDIX G**

### **Contents of Proposal**

#### **SECTION 1 - DEVELOPMENT CONCEPT**

##### **a) Overall Approach**

Please submit a brief (one page maximum) narrative description of your vision and approach to the development of the proposed project. The description should include summary statements of the key design features, operational strategies, target markets and financial assumptions needed to successfully construct and operate the project.

##### **b) Design Description**

Please submit a summary building program and description of the improvements to the Project Site. Development teams should submit a narrative description of the buildings and other uses on the site, the locations of the building(s) and other uses, the estimated square footage devoted to each building and the approximate building footprints.

##### **c) Preliminary Site Plan**

Please submit a preliminary site plan that visually illustrates the Design Description as described above. While a detailed and precise completed site plan is not required at this time, a preliminary site plan is necessary to properly evaluate each proposal.

##### **d) Design Graphic**

Please submit at least one graphic image, in color, of the exterior of the proposed facility. The graphic may be in the form of a draft perspective, elevation, or other form of pictorial rendering that will demonstrate the visual character of the design and the resulting building mass. While a detailed and precise completed elevation is not required at this time, a preliminary design graphic is necessary to properly evaluate each proposal.

#### **SECTION 2 - PROJECT TIMETABLE AND CRITICAL ENTITLEMENT ISSUES**

The proposal should include a general, but complete development timetable showing the various planning and entitlement steps, construction duration, estimated starting period and any future phases contemplated. A general outline of the entitlement process is provided in the Appendix. As to acquiring the entitlements necessary for execution of the proposed development plan, please provide a narrative description of the issues the proposer has identified as critical. Also, please be sure that the timetable of approximate dates for obtaining these entitlements is realistic – in requesting both the narrative and timetable, the goal of the County is to assess the proposer's understanding of the entitlement process rather than solicit an impossibly tight schedule for this process.

**SECTION 3 - COST ESTIMATE**

For each component of the proposed development, please include an estimate of development costs and a consolidated cost estimate.

**SECTION 4 - FINANCIAL PROPOSAL AND PROJECTIONS**

Please provide a description of proposed lease terms including a suggested minimum and percentage rents for the entire project and the basis for periodic adjustments of minimum rents and percentage rents. Also provide preliminary development pro formas and estimates of the operating and projected County revenues for the first 10 years of project operation. Please submit this information in the format specified in the Appendix, which is also available online. Developers may use Microsoft Excel or a similar program to model their financial projections. The County appreciates receiving both financial projections and cost estimates on disk (or by email) in addition to the hard copy format submitted with the proposal.

**SECTION 5 - DEVELOPMENT TEAM INFORMATION, PAST EXPERIENCE (FOR EACH COMPONENT) AND FINANCIAL INFORMATION****a) Identification of Development Team**

As more specifically described below, the name, address, and principal contact for the development team should be provided. Should your proposal include a joint venture, similar information should be submitted for other key members of your development team, including financial partners and other team members. Please include an organizational chart reflecting the roles and responsibilities of the Development Team. Resumes of key team members, any relevant brochures describing your company and its operation, history and projects, as well as and other relevant information for the key members of your team, should also be included in your submission.

Specifically, your submission should include the following information:

**Lead Development Team**

Provide an overview of your firm including the number of years you have been in business, the firm's development focus, parent company relationship, the number of professionals and location offices in the Los Angeles region for the County's project, and the identity of key members of the lead development firm.

In addition, you should illustrate the organization of the lead development firm for your proposed team and provide resumes of managing partner and project manager for the County's project and a description of the role of the top three members of your firm.

Describe in detail the level of commitment the proposed executive in charge and project manager for the County's project. It is imperative that all respondents identify the executive in charge and project manager for this project and specify the duration of the development and predevelopment phases.

**The Proposed Multi-Disciplinary Team**

The County does not require the lead developer to formalize its relationship with each team member, but to provide one to three alternatives that your firm is likely to contract with if selected. This includes at a minimum:

- Architect and Construction Company or Design/Build Firm
- Facility Operator

Optional team members may include:

- Civil Engineer
- Traffic Planner
- Landscape Architect
- Financial Consultant
- Marine Consultant
- Property Manager

**b) Experience with developments similar to the project proposed**

Please indicate the following information for three recent projects with which the lead developer has been involved:

- Project name;
- Location;
- Size and configuration (e.g., number of units, amenities and parking, etc.);
- Approximate cost;
- Date opened;
- Approximate current market value, occupancy rate and average monthly storage rental rate;
- Ownership pattern (e.g., build and hold; build and sell; develop only; etc.);
- Financing structure; and
- References for private and public sector parties involved in the project, including phone numbers.

To the extent that the lead developer expects the County to rely on the credentials of any certain team member other than the prime developer, please provide the information requested above for those team members. The specific project references should preferably be ones on which the team member worked with the lead developer.

The proposer may wish to mark some information, such as financial statements, as "CONFIDENTIAL" or "PROPRIETARY." As such, it will be treated by the County in accordance with the California Public Records Act, as detailed in the Appendix.

**SECTION 6 - STATEMENT OF FINANCIAL QUALIFICATIONS AND RESPONSIBILITY OF DEVELOPER**

Please indicate the following information:

- Name, address, telephone and fax numbers of the responsible party;
- Is the developer a subsidiary of, or affiliated with, any other corporation, corporations, partnerships or firms? If so, please specify. If the developer is a subsidiary, please indicate the extent to which the parent entity will guarantee performance by the subsidiary;
- Names and addresses of three financial references, including a primary bank;
- Has the developer entity or its officers, principal members, shareholders or investors, or any of its parent, subsidiary or affiliated entities or other interested parties been adjudged bankrupt, either voluntary or involuntarily, within the past ten years? If so, explain; and
- Is there pending litigation against the developer entity or its officers, principal members, shareholders or investors, or any parent, subsidiary or affiliated entities or other interested parties other than minor personal injury suits involving claims under \$250,000? If so, explain.
- Financial statements for the previous three years for the proposed entity with whom the County will contract.

**SECTION 7 - DISCLOSURE OF BENEFICIAL OWNERSHIP**

The developer must indicate the names of all beneficial owners of 5% or more of the proposed lessee entity; corporate names will not suffice.

**SECTION 8 - OTHER REQUIRED FORMS**

Proposer must complete a Financial Information Release Authorization form, a Firm/Organization Information form and a CBE Sanctions form as provided in the Appendix.

**SECTION 9 - ADDITIONAL REQUIREMENTS FOR PROPOSALS WHICH INCLUDE LEASE EXTENSIONS**

Respondents wishing to submit proposals that include existing Marina del Rey leaseholds must provide an additional, separate section that includes information as described in Appendix C, "Coordination with Lease Extension Proposals."

## APPENDIX H

### **Selected County Contract Terms and Conditions**

#### **ASSURANCE OF COMPLIANCE WITH CIVIL RIGHTS LAWS**

Proposers will assure they will comply with subchapter VI of the Civil Rights Act of 1964, 42 USC Section 2000a through 2000e (17), to the end that no person shall, on the grounds of race, religion, color, sex, age, physical disability, marital status, political affiliation or national origin be excluded from participation in, be denied the benefits of, nor be otherwise subjected to discrimination under any contract granted by the County nor any project, program or activity supported by any such contract.

#### **COMPLIANCE WITH COUNTY LOBBYING REQUIREMENTS**

Each County lobbyist or County lobbying firm, as defined in Los Angeles County Code Section 2.160.010 retained by any Proposer hereunder, shall full comply with the County Lobbyist Ordinance, Los Angeles County Code Chapter 2.160.

#### **GRATUITIES**

It is improper for any County officer, employee or agent to solicit consideration, in any form, from a Proposer with the implication, suggestion or statement that the Proposer's provision or the consideration may secure more favorable treatment for the Proposer in the award of a contract or that the Proposer's failure to provide such consideration may negatively affect the County's consideration of the Proposer's submission. A Proposer shall not give, either directly or indirectly or through an intermediary, consideration, in any form, to a County officer, employee or agent for the purpose of securing favorable treatment with respect to the award of a contract.

A Proposer shall immediately report any attempt by a County officer, employee or agent to solicit such improper consideration. The report shall be made either to the County manager charged with the supervision of the employee or to the County Auditor-Controller's Employee Fraud Hotline at (213) 974-0914 or (800) 544-6861. Failure to report such a solicitation may result in the Proposer's submission being eliminated from consideration.

Among other items, such improper consideration may take the form of cash, discounts, service, the provision of travel or entertainment, or tangible gifts.

#### **CONSIDERATION OF GAIN PROGRAM PARTICIPANTS FOR EMPLOYMENT**

Should Contractor require additional or replacement personnel after the effective date of this Agreement, Contractor shall give consideration for any such employment openings to participants in the County's Department of Public Social Services' Greater Avenues for Independence (GAIN) Program who meet Contractor's minimum qualifications for the open position. The County will refer GAIN participants by job category to the Contractor.

#### CONSIDERATION OF GAIN PROGRAM PARTICIPANTS FOR EMPLOYMENT

Should Contractor require additional or replacement personnel after the effective date of this Agreement, Contractor shall give consideration for any such employment openings to participants in the County's Department of Public Social Services' Greater Avenues for Independence (GAIN) Program who meet Contractor's minimum qualifications for the open position. The County will refer GAIN participants by job category to the Contractor.

#### CONSIDERATION OF HIRING COUNTY EMPLOYEES TARGETED FOR LAYOFFS

Should Contractor require additional or replacement personnel after the effective date of the Contract to perform the services set forth herein, Contractor shall give first consideration for such employment openings to qualified permanent County employees who are targeted for layoff after the effective date of this Contract.

#### LOBBYISTS

Each County Lobbyist or County lobbying firm as defined in Los Angeles County Code Section 2.160.010, shall fully comply with County Lobbyist Ordinance, Los Angeles County Code 2.160. Failure on the part of any County Lobbyist or County lobbying firm to fully comply with the County Lobbyist Ordinance shall constitute a material breach of this Agreement upon which County may immediately terminate or suspend this Agreement.



**Stan Wisniewski**  
Director

**Kerry Gottlieb**  
Chief Deputy

June 3, 2004

TO: Small Craft Harbor Commission  
FROM: *Kerry Gottlieb Silverman for*  
Stan Wisniewski, Director

**SUBJECT: ITEM 5b – Assignment of Leasehold Interest And Amendment to Lease – Parcel 10R (Neptune Marina) – Marina del Rey**

Item 5b on your agenda pertains to the proposed assignment of leasehold interest in Parcel 10R from Neptune Marina to Legacy Partners Neptune Marina L.P., and the proposed ninth amendment to the lease. The attached Board letter contains background information on our recommendations to consent to the proposed assignment and the lease amendment.

Your Commission's endorsement of our recommendations to the Board of Supervisors, as contained in the attached letter, is hereby requested.

SW:pw

Attachment

June 15, 2004

The Honorable Board of Supervisors  
County of Los Angeles  
383 Kenneth Hahn Hall of Administration  
500 West Temple Street  
Los Angeles, California 90012

Dear Supervisors:

**CONSENT TO ASSIGNMENT OF LEASEHOLD INTEREST AND AMENDMENT TO  
LEASE - PARCEL 10R (NEPTUNE MARINA) - MARINA DEL REY  
(4th DISTRICT)  
(3 VOTES)**

**IT IS RECOMMENDED THAT YOUR BOARD:**

1. Find that approval of the proposed assignment of the leasehold interest and amendment of the lease for Parcel 10R, Lease No. 5574, is categorically exempt under the California Environmental Quality Act pursuant to Classes 1(r) and 4(j) of the County's Environmental Document Reporting Procedures and Guidelines.
2. Approve and authorize the Chairman of the Board to sign the attached Consent to Assignment of Lease (Consent) (Exhibit A) for Parcel 10R from Neptune Marina, a California limited partnership (Neptune), to Legacy Partners Neptune Marina L.P., a Delaware limited partnership (Legacy).
3. Approve and authorize the Chairman of the Board to sign the attached Amendment No. 9 to Lease No. 5574 (Amendment) (Exhibit B) which: (1) expands the definition of an assignment under Section 22 of the original lease; (2) allows for a retroactive adjustment of percentage rents for boat slips; and (3) provides for an increase in liability insurance coverage.

**PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION**

Marina del Rey leases provide that the County's consent is required on most lease assignments and that such consent may not be unreasonably withheld. Neptune is now requesting the County's consent to the assignment of its leasehold interest in Parcel 10R, commonly known as the Neptune Marina Apartments, to Legacy. Department policy provides that the County's approval or denial of any assignment will be based on the following criteria: (a) the financial condition of the assignee; (b) the price to be paid for the leasehold as it relates to the improvements or potential development thereon; and (c) management of the leasehold by the new lessee being in the best interests of the Marina as a whole.

Our review has found: (a) Legacy, the proposed assignee, is a single purpose entity formed for the purpose of owning and operating the leasehold and has adequately demonstrated its financial ability to provide for the continued operation and maintenance of the leasehold; (b) the \$20,000,000 sale price appears to be fair for the leasehold interest and improvements thereon; and (c) Legacy has the required experience to operate the leasehold consistent with the Marina's interest. The general partner of Legacy is the founder of several successful commercial and residential real estate development and management companies, including Legacy Partners Commercial, Inc. and Legacy Residential Partners, Inc., with the latter having experience developing more than 51,000 multifamily units during its 30-year history, and currently owns and manages more than 30,000 multifamily units throughout the Western United States.

With regard to the Amendment, Section 22 of the lease currently defines an assignment as the change in one or more general partners in a limited partnership and/or the sale or transfer of 50% or more of the stock in a corporation that owns the leasehold. Since the proposed new lessee is a limited partnership with a limited liability company as one of its limited partners, it is appropriate to expand the definition of an assignment in the lease beyond limited partnerships and corporations in order to cover similar changes that may be undertaken by a limited liability company. Therefore, the proposed amendment, requested by the County as a condition of the assignment, specifies that the change in one or more of the managing members, or the sale, assignment, or transfer of fifty percent or more of the ownership interests of a limited liability company, shall also be considered an event of assignment subject to the County's approval. Moreover, the Amendment also expands the definition of assignment to include a series of additional transfers.

The Honorable Board of Supervisors  
June 15, 2004  
Page 3

As an additional condition of the assignment, lessee has agreed to an adjustment in the percentage rent for slips to 25%, retroactive to May 4, 1993, plus interest. County has already received \$162,185 as additional rent, and upon completion of the assignment, will receive an additional payment representing interest on the retroactive rent.

Finally, lessee has further agreed to maintain a higher level of commercial general liability insurance coverage on the leasehold. The new coverage will increase the single limit per occurrence from the existing \$1,000,000 requirement to \$10,000,000, and the aggregate requirement from \$2,000,000 to \$20,000,000, as recommended by the Chief Administrative Office's Risk Manager.

#### Implementation of Strategic Plan Goals

These recommendations are consistent with the County's Strategic Plan Goals of Fiscal Responsibility and Service Excellence. The County will realize additional revenues from lessee's agreement to pay a higher boat slip and liveaboard percentage rent retroactive to 1993, while allowing the transfer of the leasehold interest to accommodate a bona fide financial transaction and retaining appropriate control of the leasehold to protect the County's interests.

#### **FISCAL IMPACT/FINANCING**

The County has received \$162,186 as retroactive rents and will receive an additional amount as interest payment on the retroactive rent after consummation of the assignment.

#### **FACTS AND PROVISIONS/LEGAL REQUIREMENTS**

On May 4, 1962, the County entered into a 60-year lease for the premises currently known as Parcel 10R, Neptune Marina Apartments, with the lessee, consisting of Stanton Jay Platt, Samuel Leeds, and George R. Platt. On February 22, 1972, your Board approved an assignment of interest in Parcel 10R to Neptune Marina, a California limited partnership.

The parcel is currently improved with 136 apartment units and 184 boat slips on 7.3 acres of land and 4.7 acres of water leasehold area.

The proposed assignee is a Delaware limited partnership, having Legacy Partners 2598 L.P., a California limited partnership, as its general partner, and AIGGRE Residential Fund Chelsea I LLC, a Delaware limited liability company, and AIRE Investments Inc., a

The Honorable Board of Supervisors  
June 15, 2004  
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Delaware corporation, as its limited partners. The attached Exhibit C illustrates the proposed ownership structure.

The Consent and the Amendment have been approved as to form by County Counsel. At its meeting held on June 9, 2004, the Small Craft Harbor Commission voted to \_\_\_\_\_ the Director's recommendation that your Board consent to the assignment of the leasehold interest and amendment of the lease.

#### **ENVIRONMENTAL DOCUMENTATION**

Approval of the assignment of the leasehold interest and amendment of the lease is categorically exempt under the California Environmental Quality Act pursuant to Classes 1(r) and 4(j) of the County's Environmental Document Reporting Procedures and Guidelines.

#### **IMPACT ON CURRENT SERVICES (OR PROJECTS)**

Not applicable.

#### **CONCLUSION**

Attached are three copies each of the Consent and the Amendment. Please have the Chairman of the Board sign all copies and have the Executive Officer acknowledge the Chairman's signature. Please send two executed copies of each of the documents to the Department of Beaches and Harbors.

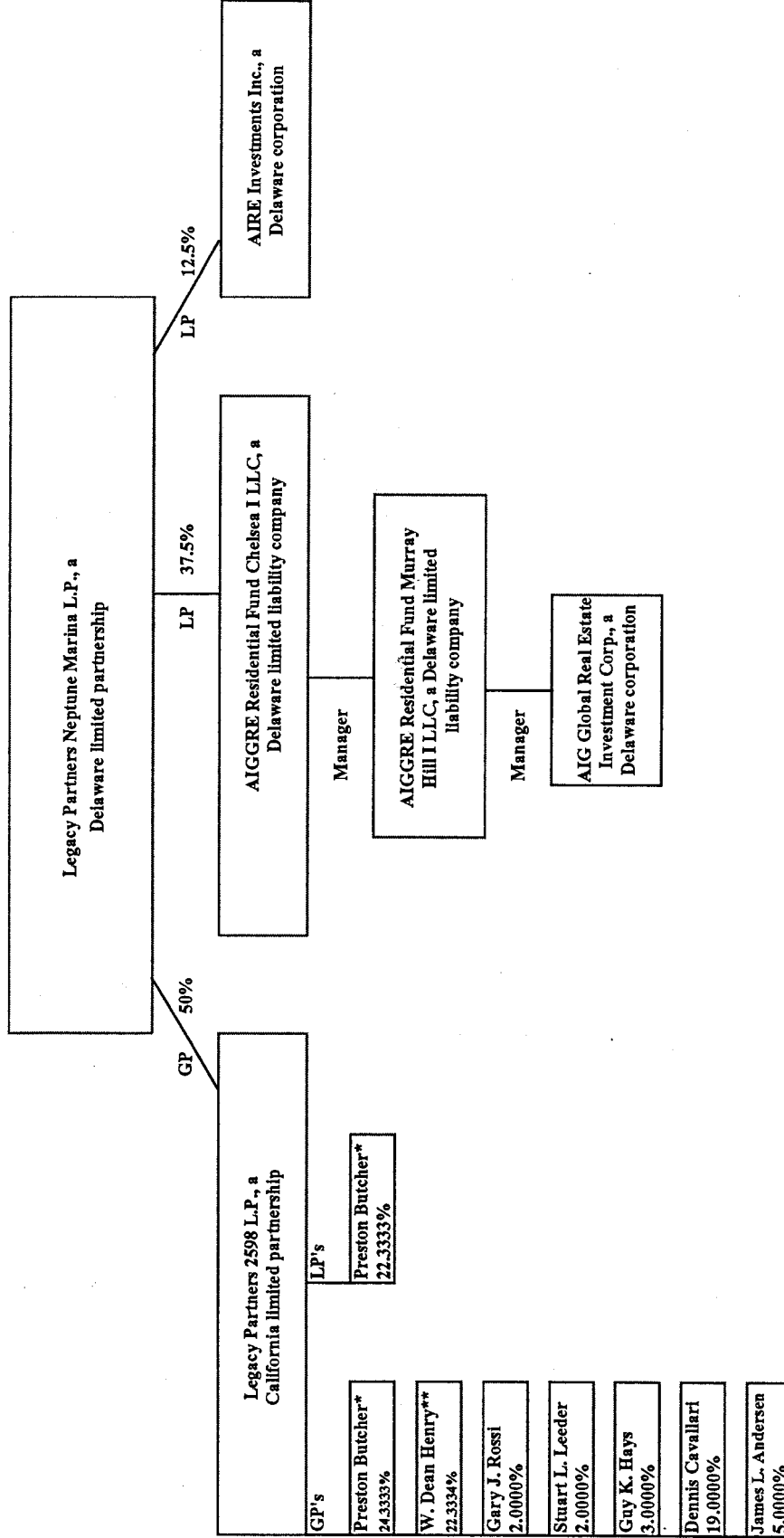
Respectfully submitted,

Stan Wisniewski, Director

SW:RM:pw  
Attachments (3)

c: Chief Administrative Officer  
Executive Officer, Board of Supervisors  
County Counsel

# EXHIBIT C



\*as trustee of the Preston Butcher Legacy Partners Business Assets Revocable Trust u/d/t dated May 12, 2003

\*\*as trustee of the W. Dean Henry Legacy Partners Business Assets Revocable Trust u/d/t dated February 20, 2004

## EXHIBIT A

### CONSENT TO ASSIGNMENT OF LEASE

The COUNTY OF LOS ANGELES (County), lessor under that certain lease No. 5574, dated May 4, 1962, as amended applicable to those certain premises commonly known as Parcel 10R, Marina del Rey Small Craft Harbor, described in the attachment hereto and incorporated herein by this reference, does hereby consent to the assignment of said Lease by the present lessee, NEPTUNE MARINA, a California limited partnership (Assignor), to LEGACY PARTNERS NEPTUNE MARINA L.P., a Delaware limited partnership (Assignee), in accordance with that certain Assignment of Lease and that certain Acceptance of Assignment of Lease prepared in connection with the proposed assignment contemplated thereby. It is further understood and agreed that the County's consent to the proposed assignment described herein is subject to the following express conditions:

- A. This Consent to Assignment shall be null and void and of no further force or effect, until and unless the assignment above referred to is complete and irrevocable in all respects within 120 days of the date of execution by the County of this Consent to Assignment of Lease and executed copies of the Assignment of Lease and Acceptance of Assignment of Lease have been provided to County's Director of Beaches and Harbors.
- B. This Consent to Assignment is contingent upon Assignee's assumption and agreement to perform all obligations past, present and future, created by the terms, covenants and conditions of said Lease on the part of the lessee therein named to be performed.
- C. This assignment, having once become complete and irrevocable in all respects, shall thereafter be fully binding upon the Assignee whether or not the Assignor and Assignee have entered into a separate agreement or understanding to which the County is not a party and which provides for or otherwise purports to affect the assignment, and whether or not in such event any party thereto alleges, claims or otherwise shows or proves that there has been a breach, default, violation, or termination of any such separate agreement.
- D. Assignee shall not make any further assignment or sublease of the Lease, nor any portion thereof, without the written consent of County as lessor having first been obtained thereto in accordance with, and to the extent required by, the provisions of the Lease.
- E. Subject to the County's audit rights for periods after December 31, 1999, Assignor has paid to County the additional principal amounts of percentage rent payable for the period from May 4, 1993 (the "Retroactivity Date") through the end of April, 2004 as a result of the retroactive application of an increase to 25 percent of total percentage rents payable by Assignor for boat slip and

liveaboard gross receipts under subsection 13(a) of the Lease (the "Reconciliation Amounts"). In addition to the Reconciliation Amounts, Assignor is required to pay to County interest on the Reconciliation Amounts as required under the terms of the Lease. As of the date of this Consent to Assignment, there is a dispute between the parties as to the amount of the interest required to be paid to County on the Reconciliation Amounts. County has asserted that the total amount of interest payable on the Reconciliation Amounts is \$89,496.00. This Consent to Assignment is contingent upon Assignor and/or Assignee placing \$89,496.00 in escrow, disbursable to the County, as the total amount owed to the County for interest payable on the Reconciliation Amounts, subject to further agreement of the parties. Assignor and Assignee shall be jointly and severally liable to County for the payment of the interest payable on the Reconciliation Amounts, and County reserves all of its rights in connection therewith. County has previously completed an audit of gross receipts under the Lease for periods through December 31, 1999. County is currently in the process of performing an audit of gross receipts for the period from December 31, 1999 through December 31, 2003 and reserves the right to also audit gross receipts for periods on and after January 1, 2004. County reserves its rights to collect additional Reconciliation Amounts (and interest thereon) for periods after December 31, 1999 if any such audit reveals an understatement of gross receipts under subsection 13(a) as amended by Amendment No. 9 referenced below.

- F. This Consent is contingent upon the execution and delivery by Assignee of that certain Amendment No. 9 to Lease No. 5574 to be entered into between Assignee and County with respect to the Lease.

Dated this \_\_\_\_ day of \_\_\_\_\_, 2004.

COUNTY OF LOS ANGELES

By: \_\_\_\_\_  
Chairman, Board of Supervisors

ATTEST:

VIOLET VARONA-LUKENS,  
Executive Officer of  
Board of Supervisors

APPROVED AS TO FORM:  
OFFICE OF THE COUNTY COUNSEL

By: \_\_\_\_\_  
Deputy

By: \_\_\_\_\_  
Deputy

EXHIBIT B

AMENDMENT NO. 9 TO LEASE NO. 5574  
PARCEL NO. 10R – MARINA DEL REY

THIS AMENDMENT TO LEASE ("Amendment") made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2004 (the "Effective Date").

BY AND BETWEEN

COUNTY OF LOS ANGELES,  
hereinafter referred to as "County"

AND

LEGACY PARTNERS NEPTUNE  
MARINA L.P., a Delaware limited  
partnership, hereinafter referred to as  
"Lessee"

WITNESSETH

WHEREAS, County and Lessee's predecessor in interest entered into Lease No. 5574 under the terms of which County leased to Lessee's predecessor in interest that certain real property located in the Marina del Rey Small Craft Harbor, County of Los Angeles, State of California, now commonly known as Parcel 10R, which leasehold premises (the "Premises") are more particularly and legally described in Exhibit "A" attached to and incorporated in said lease, as amended (the lease and all amendments are collectively hereafter referred to as the "Lease"); and

WHEREAS, Section 15 of said Lease provides that as of May 4, 1993, and as of May 4 of every tenth (10<sup>th</sup>) year thereafter (each a "Rental Adjustment Date"), the square foot rental, percentage rentals and liability insurance requirements (collectively, the "Adjusted Rentals") shall be readjusted by Lessee and County in accordance with the standards established in said Section 15; and

WHEREAS, an arbitration was conducted to determine rental rates with respect to the Adjusted Rentals which are to apply for the ten (10) year period commencing on May 4, 1993 (the "1993 Rental Adjustment Date"), however, the parties have agreed, notwithstanding the arbitration, on rates for boat slips and liveaboard; and

WHEREAS, the parties have also reached agreement with respect to the Adjusted Rentals which are to apply for the ten (10) year period commencing May 4, 2003 (the "2003 Rental Adjustment Date"), whereby the Adjusted Rentals set forth in this Amendment No. 9 shall also apply for the ten (10) year period commencing on the 2003 Rental Adjustment Date, and that the readjustment of rents set forth herein constitutes the readjustment of rents required under the Lease; and

WHEREAS, Section 22 of the Lease provides that subject to enumerated exceptions, Lessee may not assign all or any part of its interest in the Lease without the prior written consent of the County; and

WHEREAS, in consideration of the County's approval of the transfer of the Lease to Lessee, the parties desire to amend Section 22 of the Lease to define what changes shall be considered an event of assignment under said Section, including changes in management and ownership of a limited liability company; and

WHEREAS, Section 26 of the Lease provides for the periodic adjustment of the amounts of liability insurance that Lessee is required to maintain under the Lease and the parties hereto have reached agreement as to the amount of liability insurance to be maintained by Lessee as of the Effective Date hereof;

NOW, THEREFORE, in consideration of the mutual agreements, covenants and conditions contained herein, the parties, and each of them, agree as follows:

1. Square Foot Rental. The parties agree that there shall be no adjustment to the square foot rental as provided under Section 12 of the Lease, which shall be applicable as well for the ten (10) year period commencing on the 2003 Rental Adjustment Date.

2. Percentage Rental. Commencing as of the 1993 Rental Adjustment Date and continuing through the ten (10) year period commencing on the 2003 Rental Adjustment Date, subsection (a) of Section 13 (PERCENTAGE RENTALS) of the Lease is deemed deleted and the following subsection is substituted therefor:

“(a) Twenty-Five Percent (25%) of gross receipts from the rental or other fees charged for the use of boat slips (including live-aboard charges), anchorages, moorings, dockside gear lockers, dockside storage space, and such other facilities and services ancillary thereto as are provided in common to all tenants.”

Effective as of the 1993 Rental Adjustment Date and continuing through the ten (10) year period commencing on the 2003 Rental Adjustment Date, Subsection 13(c)(8) of the Lease shall be deleted. All other categories of percentage rental or fees shall remain at their present levels.

3. Assignment and Sublease. Commencing as of the Effective Date, Section 22 (SUBLEASES, ASSIGNMENTS, AND SUCCESSORS) is amended by adding the following at the end of such Section 22:

“For purposes of this Section 22, the following shall constitute an assignment of this Lease by Lessee and shall require the prior written consent of County (collectively, “Changes of Ownership”):

(1) any transfer by Lessee of a five percent (5%) or greater direct ownership interest in the Lease, (2) the execution by Lessee of a sublease pertaining to all or substantially all of the Premises ("Major Sublease"), or the transfer by the sublessee under a Major Sublease of a five percent (5%) or greater direct ownership interest in such Major Sublease, (3) any transaction or series of related transactions not described in (1) or (2) above that constitute an Aggregate Transfer (as defined below) of fifty percent (50%) or more of the beneficial residual interests in Lessee or a Major Sublessee, or (4) a Change of Control (as defined below) of Lessee or a Major Sublessee. Notwithstanding the foregoing, with respect to any Aggregate Transfer of beneficial residual interests in Lessee by AIG Global Real Estate Investment Corp., or any person or entity that directly or indirectly controls, is controlled by, or is under common control with AIG Global Real Estate Investment Corp. (collectively, an "AIG Entity"), the phrase "fifty percent (50%) or more" in clause (3) above shall be changed to "more than fifty percent (50%)."

"For purposes hereof, "Aggregate Transfer" shall refer to the total percentage of the shares of stock, partnership interests, membership interests or any other equity interests (which constitute beneficial residual interests in Lessee or a Major Sublessee, as appropriate) transferred or assigned in one transaction or a series of related transactions occurring since the most recent assignment or Change of Ownership requiring County's consent (but without double counting successive transfers of the same interest in the case of a transaction or series of related transactions involving successive transfers of the same interest). Isolated and unrelated transfers shall not be treated as a series of related transactions for purposes of the definition of Aggregate Transfer.

"For purposes hereof, "Change of Control" shall refer to a transaction whereby the transferee acquires a beneficial residual interest in Lessee or a Major Sublessee which brings its cumulative beneficial residual interest in Lessee or a Major Sublessee, as appropriate, to over fifty percent (50%).

"Notwithstanding anything to the contrary contained herein, Changes of Ownership resulting from the following transfers shall not require the County's consent ("Excluded Transfers"):

"(a) a transfer by any direct or indirect partner, shareholder or member of Lessee (or of a limited partnership, corporation or limited liability company that is a direct or indirect owner in Lessee's ownership structure) as of the Effective Date, to any other direct or indirect partner, shareholder or member of Lessee (or of a limited partnership, corporation or limited liability company that is a direct or indirect owner in Lessee's ownership structure) as of the

Effective Date, including in each case to or from a trust for the benefit of the immediate family (as defined in subsection (c) below) of any direct or indirect partner or member of Lessee who is an individual;

“(b) a transfer to a spouse in connection with a property settlement agreement or decree of dissolution of marriage or legal separation, as long as such transfer does not result in a change in the management of Lessee;

“(c) a transfer of ownership interests in Lessee or in constituent entities of Lessee (i) to a member of the immediate family of the transferor (which for purposes of this Lease shall be limited to the transferor’s spouse, children, parents, siblings and grandchildren), (ii) to a trust for the benefit of a member of the immediate family of the transferor, (iii) from such a trust or any trust that is an owner in a constituent entity of Lessee as of the Effective Date, to the settlor or beneficiaries of such trust or to one or more other trusts created by or for the benefit of any of the foregoing persons, whether any such transfer described in this subsection (c) is the result of gift, devise, intestate succession or operation of law, or (iv) in connection with a pledge by any partners of a constituent entity of Lessee to an affiliate of such partner;

“(d) a transfer of a beneficial residual interest resulting from public trading in the stock or securities of an entity, where such entity is a corporation or other entity whose stock or securities are traded publicly on a national stock exchange or is traded in the over-the-counter market and whose price is regularly quoted in recognized national quotation services;

“(e) a mere change in the form, method or status of ownership (including, without limitation, the creation of single purpose entities) so long as the ultimate beneficial ownership remains the same as of the Effective Date, or as otherwise excluded in accordance with sections (a) through (d) above;

“(f) any transfer consummated pursuant to Section 12.02(a) of the Limited Partnership Agreement of Lessee in the form of such partnership agreement existing as of the Effective Date and delivered to County on or prior to the Effective Date;

“(g) any transfer resulting from a condemnation by County; or

“(h) any assignment of the Lease by Lessee to a parent, subsidiary or affiliate of Lessee in which there is no change to the direct and indirect beneficial ownership of the leasehold interest.

“In addition, except for Excluded Transfers, the following shall also require the prior written consent of County: (A) the addition, removal or replacement of one or more general partners or managing members in a Lessee which is a limited partnership or limited liability company, except (y) by death, insolvency, incapacity, resignation (except for a sole general partner, if any), or removal of a general partner or managing member and his replacement by a vote of the limited partners, the remaining general partners or remaining members, or (z) if any general partner or managing member owning more than fifty percent (50%) of the interests of the partnership or limited liability entity acquires the interest of another general partner or managing member owning fifteen percent (15%) or less of the interests in the partnership or limited liability entity; or (B) the sale, assignment, or transfer of fifty percent (50%) or more of the stock, partnership interests or limited liability company interests in an entity which owns, or is a general partner or managing member of an entity which owns, an interest in this Lease; provided, however, that with respect to any sale, assignment or transfer of an AIG Entity or ownership interests therein, the phrase “fifty percent (50%) or more” in clause (B) above shall be changed to “more than fifty percent (50%).” Lessee shall provide County with any information reasonably requested by County in order to determine whether to grant approval of the matters requiring County’s consent under this paragraph. The limitations and approval requirements set forth in this paragraph as to Lessee’s interest under the Lease shall also apply with respect to any sublessee’s interest under a Major Sublease.

“For purposes hereof, “beneficial residual interest” shall refer to the ultimate direct or indirect ownership interests in Lessee (or a Major Sublessee, as applicable), regardless of the form of ownership and regardless of whether such interests are owned directly or through one or more layers of constituent partnerships, corporations, limited liability companies or trusts.”

4. Insurance. Commencing as of the Effective Date and continuing through the 10-year period commencing on the 2003 Rental Adjustment Date, the second paragraph of Section 26 of the Lease is deleted and the following substituted therefor:

“Lessee shall maintain in full force and effect during the Term of this Lease, commercial general liability insurance coverage, together with premises operations, products, completed operations, advertising, independent contractor and contractual liability coverages, including liquor liability, with a combined single limit of not less than Ten Million

Dollars (\$10,000,000) per occurrence, Twenty Million Dollars (\$20,000,000) annual aggregate. Lessee agrees that County and its respective Board of Supervisors and members thereof, and County's officers, agents, employees and volunteers, shall be named as additional insureds under such liability insurance policy or policies. The insurance described in this paragraph shall provide coverage on a "primary basis" with respect to the additional insureds, regardless of any other insurance or self-insurance that such additional insureds may elect to purchase or maintain."

5. Concurrent Assignment. This Amendment No. 9 is to be executed concurrently with the assignment of the leasehold estate from Neptune Marina, a California limited partnership, to Legacy Partners Neptune Marina L.P., a Delaware limited partnership. If the assignment does not occur, this Amendment shall be null and void and shall have no effect on the subject leasehold.

6. No Other Modifications. Except as herein specifically amended, all terms, conditions and provisions of the Lease shall be and continue to remain in full force and effect and are unmodified, and each of the parties hereto reaffirms and reacknowledges its respective obligations under the Lease as amended hereby.

SIGNATURES ON FOLLOWING PAGE

IN WITNESS WHEREOF, the County has, by order of its Board of Supervisors, caused this Amendment to Lease to be subscribed by the Chairman of the Board, and the Lessee has executed same the day and year first hereinabove written.

COUNTY OF LOS ANGELES

By: \_\_\_\_\_  
Chairman, Board of Supervisors

LEGACY PARTNERS NEPTUNE  
MARINA L.P., a Delaware limited  
partnership

Legacy Partners 2598 L.P., a California  
limited partnership, its general partner

By: \_\_\_\_\_  
Dennis Cavallari, general partner

Attest:

Violet Varona-Lukens  
Executive Officer of the  
Board of Supervisors

By: \_\_\_\_\_  
Deputy

APPROVED AS TO FORM:  
OFFICE OF COUNTY COUNSEL

BY: \_\_\_\_\_  
Deputy



*To enrich lives through effective and caring service*



June 3, 2004

TO: Small Craft Harbor Commission  
FROM: *Kerry Gottlieb Silverstein for*  
Stan Wisniewski, Director  
SUBJECT: **AGENDA ITEM 5c - JOINT RECOMMENDATION OF THE CHIEF ADMINISTRATIVE OFFICER AND DIRECTOR OF THE DEPARTMENT OF BEACHES AND HARBORS TO APPROVE AND AUTHORIZE EXECUTION OF AMENDMENT TO SECOND AMENDED AND RESTATED LEASE NO. 55624 - PARCEL 125R (MARINA CITY CLUB) - MARINA DEL REY**

Item 5c on your agenda relates to a proposed amendment, jointly recommended by the Department and the Chief Administrative Officer, that will effect changes to the rent structure for the condominium portion of the Marina City Club (Parcel 125R) lease.

The proposed amendment is structured to allow use of accumulated rent payments to facilitate the early completion of certain defined capital improvements to the condominium structure, and provides a revenue-neutral mechanism for the repayment to the County of all such funds, with interest.

The attached Board letter contains details regarding the proposed amendment. Your Commission's endorsement of our joint recommendation to the Board of Supervisors, as contained in the attached letter, is requested.

Please let me know if you would like additional information at this time.

SW:rm

Attachment

June 29, 2004

The Honorable Board of Supervisors  
County of Los Angeles  
383 Kenneth Hahn Hall of Administration  
500 West Temple Street  
Los Angeles, California 90012

Dear Supervisors:

**JOINT RECOMMENDATION OF THE CHIEF ADMINISTRATIVE OFFICER AND  
DIRECTOR OF THE DEPARTMENT OF BEACHES AND HARBORS TO APPROVE  
AND AUTHORIZE EXECUTION OF AMENDMENT TO SECOND AMENDED AND  
RESTATED LEASE NO. 55624 – PARCEL 125R (MARINA CITY CLUB) – MARINA  
DEL REY  
(4th DISTRICT)  
(4 VOTES)**

**IT IS JOINTLY RECOMMENDED THAT YOUR BOARD:**

1. Find that the proposed Amendment to the Second Amended and Restated Lease No. 55624 for Parcel 125R (Exhibit 1) is categorically exempt under the California Environmental Quality Act pursuant to Classes 1(r) and 4(j) of the County's Environmental Document Reporting Procedures and Guidelines.
2. Approve and authorize the Chairman of the Board to sign three copies of Amendment No. 4 to the Second Amended and Restated Lease No. 55624 for Parcel 125R (Amendment).

**PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION**

County and Marina City Club, L.P. were original parties to that certain Second Amended and Restated Lease (Lease) dated October 27, 1987 that allowed establishment of a condominium plan and assignment of subleased condominium interests (Condominium Subleases) in the 600 high-rise units (Condominium Units) constructed on the leasehold. The Lease was subsequently assigned to Essex Portfolio L.P., a California limited partnership (Lessee), on December 11, 2003. The leasehold contains 600 Condominium Units and also 101 low-rise apartment units, a promenade and certain common area facilities.

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June 29, 2004  
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The Condominium Subleases provide, among other terms, for the continued payment of ground rent to the County and for continuing contributions to the maintenance of the condominium portions of the leasehold. The proposed Amendment provides a one-time opportunity for holders of Condominium Subleases (Condominium Sublessees) to modify the terms of their Condominium Subleases to provide: a) a temporary freeze on annual increases in rent due the County; b) a fixed (rather than the current variable) increase in payments due the County in future years; c) a mechanism for utilization of certain accumulated rents paid to the County to address the funding of infrastructure and capital improvements relating to leasehold facilities; and d) a mechanism for repayment to the County of advanced and deferred rent amounts, with interest. The proposed Amendment is a continuation of a policy adopted by your Board in January 1999, wherein the Department was instructed to establish a deferred revenue account to deposit certain incremental rent increases from the leasehold pending agreement that would address both rent and leasehold facilities concerns.

Current Lease Provisions:

Pursuant to the terms of the Lease, the Condominium Units were assigned to Marina City Condominiums, a California limited partnership, and subsequently individually assigned, on a condominium-by-condominium basis, to individual Condominium Sublessees, together with the undivided leasehold interest in the common areas and appurtenant rights applicable to each Condominium Unit. The Lease requires the Lessee to pay, among other payments, percentage rents for each Condominium Sublease, the amount of which rents are determined, in part, by "shadow rent". "Shadow rent" is an amount meant to approximate the rent the County would have received had the condominiums remained rental apartments. This device was designed as a quid-pro-quo for the County's consent to allow condominium sales of a sublease interest in the Condominium Units.

While the parties to the Lease are the County and Lessee, and the parcel contains both apartments and Condominium Units, the Lessee (in the case of the Condominium Units) acts essentially as a pass-through for the payment of the County's monthly "shadow rent" by the individual Condominium Sublessees. The individual Condominium Sublessees

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have a possessory interest in the Condominium Units purchased and may sell their interest to others, however at the end of the lease term (2067), full title and use rights to all of the Condominium Units, as well as all rights to common areas and all appurtenant rights, will revert to the County. The amount of shadow rent was set at the date of the condominium conversion and by the terms of the Lease is adjusted annually in accordance with an index, reflecting changes in Westside Los Angeles residential prices and the Consumer Price Index (CPI). The County also receives one percent (1%) of gross sale proceeds (Administrative Transfer Fee) as each Condominium Unit is "sold" (assigned) throughout the term of the Lease.

Further, while the County looks to the Lessee for maintenance of the three condominium towers and associated common areas as a legal matter pursuant to the terms of the Lease, the primary financial burden of funding both the maintenance and any needed structural repairs falls to the individual Condominium Sublessees. In response to the Condominium Sublessees' requests for certain adjustments in shadow rent and in order to aid in correcting building structural and infrastructure deficiencies, your Board directed that all amounts representing annual increases in shadow rent starting January 1, 1999 be held in a separate account pending consideration and negotiation between the County, the Lessee and the Condominium Sublessees of a plan to accomplish the expressed needs of the Condominium Sublessees and preserve the County's lease revenue benefits. In addition, during the interim period of negotiation and pursuant to action of your Board on December 16, 2003, the shadow rent increase scheduled to take effect on January 1, 2004 was also suspended pending finalization of the proposed Amendment, subject to reinstatement and/or repayment, with interest at the County's "pool rate", if the Amendment does not become effective, as is more fully described below.

#### Amendment Provisions:

The Amendment will establish two categories of Condominium Sublessees as follows: a) Condominium Sublessees who timely elect to modify their Condominium Subleases (Category A Condominium Sublessees); and b) Condominium Sublessees who do not elect to modify their Condominium Subleases or do not make a timely election to do so

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(Category B Condominium Sublessees).

The proposed Amendment, if approved by your Board, becomes effective only upon fulfillment of certain preconditions – principally the affirmative election by not less than 480 of the 600 Condominium Sublessees, coupled with the consent of their individual lenders, to the proposed Condominium Sublease modifications. A complete list of the preconditions to the effectiveness of the Amendment is provided in Exhibit B to the attached Amendment.

The Amendment, once effective, will provide for both a temporary “freeze” on increases in shadow rent for Category A Condominium Sublessees only, and utilization of the amounts of shadow rent increases accumulated pursuant to your Board’s direction since January 1, 1999 (which will further accumulate during the proposed temporary freeze period extending through 2006) to fund the cost of certain defined capital improvements to leasehold infrastructure and other capital improvement items (as specified in Exhibit W to the attached Amendment). Amounts advanced for such authorized capital improvements to the leasehold will be provided on a reimbursable basis only in amounts in proportion to the percentage that Category A Condominium Sublessees bear to the total Condominium Sublessee pool (i.e., if Category A Condominium Sublessees equal 90% of the total sublessee pool, 90% of such costs will be advanced, and the Category B Condominium Sublessees will be separately assessed by the Lessee for their pro-rata share of such costs). Such advanced amounts are to be repaid, with interest, by the Category A Condominium Sublessees over time from an increase in Administrative Transfer Fees payable to the County upon any sale of a Condominium Unit from the current level of one percent (1%) of gross sale proceeds to two and one-half percent (2.5%), and from either assessments or further increases (if necessary) in shadow rent percentage in later years should the increased Administrative Transfer Fee amounts prove insufficient to both fully amortize the amounts, with interest, advanced to the Lessee and to recover the rent loss due to the temporary freeze on increased shadow rent.

All interest that may become due under the terms of the Amendment is payable at the rate equal to the investment yield earned on the County’s Treasury Pool during such period, as

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contained in County's Report of Investments covering such period (County "pool rate").

Amendment Preconditions – Effect of Failure to Meet Preconditions:

The Amendment requires that a number of preconditions be satisfied by the Lessee and Condominium Sublessees, including execution of amendments to each of at least 480 of the Condominium Subleases and consent of any Condominium Unit lender to such amendment. If the Amendment does not become effective on or before June 30, 2004, any amounts that would otherwise be payable to County in the form of increased Administrative Transfer Fees due to Condominium Unit transfers that take place between June 30, 2004 and September 30, 2004 must be paid by the Lessee to the County upon the effective date of the Amendment.

If all of the preconditions to effectiveness of the Amendment are not achieved on or prior to September 30, 2004, the Amendment will not take effect and the shadow rent increase scheduled for January 1, 2004 and previously suspended by action of your Board will be retroactively implemented and sums due pursuant to such increase, with interest, become immediately due and payable. If all preconditions are fulfilled and the Amendment becomes effective, Category B Condominium Sublessees will be retroactively assessed with the suspended increased shadow rent amounts and such amounts, with interest, will become immediately due and payable by the Lessee, who will enforce the payment against all Category B Condominium Sublessees through its sublease and enforcement deed rights.

A detailed description of the implementation provisions of the Amendment is provided later herein (see "Facts and Provisions/Legal Requirements").

Implementation of Strategic Plan Goals

In furtherance of County Goal #4, "Fiscal Responsibility," the recommended action will allow the Department to implement that portion of its Strategic Plan that enhances strategic partnerships with existing and prospective lessees toward preservation of County assets by

facilitating repairs and replacement of infrastructure and capital improvements on leasehold property that will eventually revert to County ownership. This recommendation is also consistent with the County's Strategic Plan Goal of "Service Excellence", in that while maintaining appropriate protection of County interests, it allows for and facilitates the preservation of improvements on the leasehold through arrangements with the Lessee.

### **FISCAL IMPACT/FINANCING**

Fiscal impact is limited to the delay in collection of certain portions of County rent for the leasehold, all of which is to be repaid, with interest, in the event the proposed Amendment is not effectuated or repaid over the course of the Lease term, with interest, if the proposed Amendment is approved, the operation of the Amendment being designed to be revenue neutral to the County.

### **FACTS AND PROVISIONS/LEGAL REQUIREMENTS**

#### **Amendment Terms:**

The proposed Amendment, if approved by your Board, becomes effective only upon fulfillment of certain preconditions – principally the affirmative election by not less than 480 of the 600 Condominium Sublessees, coupled with the consent of their individual lenders, to the proposed Condominium Sublease modifications. A complete list of the preconditions to the effectiveness of the Amendment is provided in Exhibit B to the attached Amendment. The Amendment, once effective, will contain the following elements:

- County will extend a "freeze" on increases in shadow rent for three years, beginning January 1, 2004 for all Category A Condominium Units (as discussed further below). Starting January 1, 2007, annual fixed increases in shadow rent of 3.75% will be implemented for all Category A Condominium Units in lieu of the variable rent adjustment index now provided in the Lease.
- County will continue to accumulate the excess amounts of shadow rent over the

1999 shadow rent rate during the three-year "freeze" period.

- County will establish a "Condominium Project Maintenance Account", consisting of the funds and interest thereon collected in excess of the 1999 base amount through January 1, 2007, that will be utilized to reimburse sums for defined capital improvements ("Covered Repairs" as detailed in Exhibit W of the attached Amendment), upon presentation of evidence that such amounts have been fully paid and lien waivers have been obtained for all such contracted work.
- Repayment of all accumulated funds allowed to be utilized for specified capital improvements, plus interest at the County's pool rate, will come from increased County participation on sale proceeds. County's participation in such sale proceeds from all Category A Condominium Units is raised from its current 1% level to 2.5% for all sales occurring after June 30, 2004.
- If such sums advanced for permitted capital improvements have not been fully repaid, with interest, from the increased participation on sale proceeds by 2022, then cash repayment is required, such repayment being secured by a first deed of trust on all Condominium Units.
- If, by 2019, it appears that additional County revenue from increased proceeds participation from Category A Condominium Unit sales will not fully reimburse County for the present value of the loss due to the three-year freeze of increased shadow rent, a "lookback" provision provides a formula for an upward adjustment of shadow rent increase from the fixed 3.75% annual level for the remainder of the Lease term, so that the County will be made whole for any such shortfall.
- Lessee will provide a permanent and exclusive easement to the County to permit the widening of the current waterfront promenade from its existing irregular width (ranging from approximately 3.5 feet to 7.5 feet in width) to a uniform width of 12.5 feet.

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Further Provisions Relating to Temporary Forebearance:

The County previously, by action of your Board on December 16, 2003, agreed to refrain, for a limited period (Forbearance Period), from implementing the increase in the shadow rent as to each of the Condominium Subleases that was otherwise scheduled to be effective as of January 1, 2004 under the Lease (the "2004 Increase") so as to allow for the negotiation and ultimate implementation of the terms of this proposed Amendment. This suspension will continue to a date not later than September 30, 2004 upon the following terms and conditions:

A) If the Forbearance Period (the period during which the scheduled 2004 shadow rent increase is suspended, not to extend beyond September 30, 2004) ends because the Amendment becomes effective, then the 2004 Increase shall apply only to the Category B Units and be retroactive to January 1, 2004 and, not later than thirty (30) days after the end of the Forbearance Period, Lessee shall pay County the sum of (a) the amount by which the shadow rent for each Category B Unit (as increased by the 2004 Increase) was underpaid during the Forbearance Period, plus (b) interest at the County's pool rate.

B) If the Forbearance Period ends due to the failure of the Amendment to become effective through the failure of one or more of the preconditions of effectiveness listed in the Amendment or otherwise, then the 2004 Increase shall apply to each of the Condominium Sublessees (both the Category A Units and the Category B Units) and be retroactive to January 1, 2004 and, not later than thirty (30) days after the end of the Forbearance Period, Lessee shall pay County the sum of (a) the amount by which the Master Lease shadow rent for each Condominium Sublease (as increased by the 2004 Increase) was underpaid during the Forbearance Period, plus (b) interest at the County's pool rate.

The Small Craft Harbor Commission at its meeting of June 9, 2004 \_\_\_\_\_ the joint recommendation to approve the Amendment. County Counsel has approved the Amendment as to form.

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**ENVIRONMENTAL DOCUMENTATION**

The proposed Amendment is categorically exempt under the California Environmental Quality Act pursuant to Classes 1(r) and 4(j) of the County's Environmental Document Reporting Procedures and Guidelines. This proposed action and the Amendment, in and of themselves, do not authorize any construction or other activity.

**IMPACT ON CURRENT SERVICES (OR PROJECTS)**

There is no impact on current County services as a result of the Amendment.

**CONCLUSION**

Please authorize the Chairman to execute three copies of the Amendment and direct the Executive Officer to return two executed copies of the Amendment to the Department of Beaches and Harbors.

Respectfully submitted,

David Janssen, Chief Administrative Officer

Stan Wisniewski, Director  
Department of Beaches and Harbors

Attachment (1)

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c: Executive Officer  
County Counsel

DJ/SW:rm

## EXHIBIT 1

AMENDMENT NO. 4 TO THE SECOND AMENDED AND RESTATED  
LEASE (IMPROVED PARCEL) NO. 55624,  
PARCEL NO. 125R – MARINA DEL REY SMALL CRAFT HARBOR

THIS AMENDMENT NO. 4 TO THE SECOND AMENDED AND RESTATED  
LEASE (IMPROVED PARCEL) NO. 55624, PARCEL NO. 125R – MARINA DEL REY  
SMALL CRAFT HARBOR (this "Amendment") is made and entered into this \_\_\_\_ day of  
\_\_\_\_\_, 2004,

BY AND BETWEEN

COUNTY OF LOS ANGELES,  
hereinafter referred to as "County",

AND

ESSEX MARINA CITY CLUB, L.P.,  
a California limited partnership, as successor in  
interest to Marina City Club, L.P., a California limited  
partnership (f/k/a J.H. Snyder Company), hereinafter  
referred to as "Lessee".

WITNESSETH:

WHEREAS, County and Marina City Club, L.P., a California limited partnership ("Original Lessee"), entered into that certain Second Amended and Restated Lease [Improved Parcel] dated October 27, 1987 and identified as Lease No. 55624 (the "Original Lease"), as amended by (i) that certain First Amendment to the Second Amended and Restated Lease (Improved Parcel) No. 55624 Parcel 125R Marina del Rey dated November 4, 1988, (ii) that certain Second Amendment to the Second Amended and Restated Lease (Improved Parcel) No. 55624 Parcel 125R - Marina del Rey dated August 1, 1992, and (iii) that certain Amendment No. 3 to the Second Amended and Restated Lease (Improved Parcel) No. 55624 Parcel 125R – Marina del Rey Small Craft Harbor dated December 3, 2002 (the Original Lease, as so amended, is hereinafter referred to as the "Lease");

WHEREAS, pursuant to that certain Assignment of Lease dated as of December 11, 2003 and that certain Acceptance of Assignment of Lease dated as of December 18, 2003, Lessee acquired all of Original Lessee's right, title and interest in and to, and assumed Original Lessee's obligations under, the Lease effective as of January 21, 2004;

WHEREAS, the Premises under the Lease are improved with, among other things, three high-rise towers that include 600 residential condominium units commonly known as the Marina City Club Condominiums, with subleasehold interests in said condominium units having been sold to Prepaid Sublessees, each of whom owns its subleasehold interest in the condominium unit subject to the terms of the Lease (each of the Prepaid Sublessees is a "Condominium Sublessee" for purposes of and as defined in the Master Condominium Sublease; however, such persons have not prepaid all amounts payable with respect to their subleasehold interests as each Prepaid Sublessee is obligated to pay, among other things, monthly "Ground Rent", as defined in the Master Condominium Sublease);

WHEREAS, the Lease requires Lessee to pay to County, among other payments, Percentage Rents for Prepaid Subleases (which are determined, in part, by the Shadow Rent) on a monthly basis and an Administrative Transfer Fee upon each Change of Ownership of a Prepaid Sublessee's interest, all as more particularly provided therein;

WHEREAS, each Prepaid Sublease requires the applicable Prepaid Sublessee to make corresponding payments to Lessee. Specifically, each Prepaid Sublessee is required to pay Lessee (i) monthly "Ground Rent", which is determined, in part, by the "Shadow Rent", and (ii) a "Change in Ownership Fee" upon certain transfers of the Prepaid Sublessee's interest, as defined and as more particularly provided in the Prepaid Sublease for such Prepaid Sublessee's condominium unit (i.e., the Master Condominium Sublease and the Assignment and Assumption of Condominium Sublease for the Marina City Club Tower Apartments between Snyder/Marina, the initial lessee under the Master Condominium Sublease, and the initial condominium sublessee for such unit);

WHEREAS, concurrently herewith, Lessee is affording each of the Prepaid Sublessees the one-time option to modify certain provisions of its Prepaid Sublease, including those regarding the calculation of the monthly "Ground Rent" and the "Change in Ownership Fee" to be paid by such Prepaid Sublessee to Lessee, all as more particularly provided in the form of Condominium Sublease Amendment (as defined in Exhibit B hereto);

WHEREAS, unless each of the Prepaid Sublessees timely elects to modify its Prepaid Sublease as provided in the form of Condominium Sublease Amendment (the "Modified Terms"), as of the date on which such modifications become effective (if that occurs), certain of the Prepaid Subleases will be modified to reflect the Modified Terms and others will remain unmodified; accordingly, for purposes of describing the Prepaid Subleases in the Lease, if sufficient Prepaid Sublessees and their lenders elect to be bound by the Modified Terms (and the other Amendment Conditions (as defined below) are timely satisfied) so that the Modified Terms become effective, County and Lessee desire to establish two categories of Prepaid Subleases, as follows:

- (i) those Prepaid Subleases as to which the applicable Prepaid Sublessee makes a timely, affirmative election to be bound by the Modified Terms ("Category A Units"); and

- (ii) all other Prepaid Subleases ("Category B Units");

WHEREAS, Lessee and County desire to amend the Lease to, among other things,

- (i) freeze the Shadow Rent attributable to Category A Units at its 2003 level through December 31, 2006,

- (ii) provide that, commencing January 1, 2007 and continuing each January 1, thereafter until at least January 1, 2018, the Shadow Rent attributable to Category A Units shall be increased by an amount equal to 3.75% of the prior year's Shadow Rent,

- (iii) for the Category A Units only, delay implementing the increase in the applicable percentage component of the formula that determines the Percentage Rents for

Prepaid Subleases from 2016 until 2019,

(iv) provide that, effective as of January 1, 2019 and continuing each January 1 thereafter during the term of the Lease, the Shadow Rent attributable to Category A Units may (but shall not necessarily) be increased by a fixed percentage greater than 3.75%, and

(v) increase the Administrative Transfer Fee to be collected by Lessee for the benefit of County (in addition to any similar fee otherwise payable to Lessee for its own account) upon a Change in Ownership of a Prepaid Sublessee's interest with respect to a Category A Unit to an amount equal to 2.5% of the sales price or other consideration given for such Change in Ownership,

all as more particularly provided in, and subject to the conditions precedent contained in, this Amendment. This Amendment is not intended, and shall not be deemed, to modify any of the provisions in the Lease relating to the Percentage Rents for those Prepaid Subleases that are Category B Units or the Administrative Transfer Fee to be collected by Lessee upon a Change in Ownership of a Prepaid Sublessee's interest with respect to a Category B Unit.

NOW, THEREFORE, with reference to the foregoing recitals, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, County and Lessee hereby agree as follows:

1. Definitions. All initially-capitalized terms used but not defined in this Amendment have the meanings given such terms in the Lease.

2. Amendment Conditions. This Amendment shall be effective on the date on which a memorandum hereof in the form attached as Exhibit A hereto (the "Memorandum") is recorded in the Official Records of Los Angeles County, California (the "Official Records"). Neither County nor Lessee shall be obligated to execute and deliver the Memorandum unless each of the conditions precedent set forth in Exhibit B hereto (the "Amendment Conditions") has been satisfied or waived by each of County and Lessee on or before June 30, 2004 or such later date as may be agreed to by Lessee, but in no event later than September 30, 2004 (as applicable, the "Outside Date"). If the Amendment Conditions are satisfied or waived on or before the Outside Date, then promptly after the satisfaction or waiver of the last Amendment Condition, County and Lessee shall execute and deliver the Memorandum and cause the same to be recorded in the Official Records.

3. Representations and Warranties. To induce County to enter into this Amendment, Lessee hereby represents and warrants to County as follows:

3.1 Lessee has not assigned its interests as lessee under the Lease or as sublessor under any Condominium Sublease; and

3.2 Lessee has not encumbered its interests in the Lease or in any Condominium Sublease with any deed of trust, mortgage or similar security instrument, nor has Lessee expressly assumed any loan secured by a deed of trust, mortgage or similar security

instrument encumbering the lessee's interest in the Lease or the Sublessor's interest in any Condominium Sublease.

4. Amendments. Effective on the date on which the Memorandum is recorded in the Official Records (the "Effective Date"), the Lease shall be amended as follows:

4.1 Categories of Prepaid Subleases. Subsection 5.02.A of the Lease shall be amended and restated as follows:

"5.02.A Prepaid Subleases. The first category consists of those residential apartments which are subleased for the entire remainder of the term of the Lease, where Gross Prepaid Subrent is paid to Lessee at the beginning of the term of the Sublease. This category is herein called the 'Prepaid Subleases' and the apartments subject to Prepaid Subleases are hereinafter called 'Prepaid Subleased Apartments'. Prepaid Subleases may result either from the use of the Approved Prepaid Sublease Form, as hereinafter defined, pursuant to subsection 10.01.B, or from the sale of a subleasehold estate condominium unit pursuant to subsection 10.01.C. Additionally, for certain purposes of this Lease, including subsection 5.08.B and Section 5.12, the Prepaid Subleases and the Prepaid Subleased Apartments are divided into two sub-categories, as follows: those listed on Exhibit U-1 attached hereto and made a part hereof (the 'Category A Units') and those listed on Exhibit U-2 attached hereto and made a part hereof (the 'Category B Units')."

4.2 Shadow Rent for Prepaid Subleases. Subsection 5.08.B of the Lease shall be amended and restated as follows:

"5.08.B Prepaid Subleases. Percentage Rents for Prepaid Subleases shall be calculated by reference to a Shadow Rent roll, as provided in this subsection 5.08.B. 'Shadow Rent' means an amount designed to approximate the subrent that would otherwise have been paid by Prepaid Sublessees to Lessee had the Prepaid Subleased Apartment continued to have been rented on a short-term basis. For each Prepaid Subleased Apartment, the Percentage Rent payable by Lessee shall equal the product of (i) the applicable percentage under subsection 5.08.B(1) below, and (ii) the applicable Shadow Rent under subsection 5.08.B(2) below.

"(1) Lessee shall pay the following percentages of the Shadow Rent for each Prepaid Subleased Apartment:

"(a) From the commencement of the term through November 6, 1987, seven and one-half percent (7.5%) per year;

“(b) Commencing upon November 7, 1987, and extending through December 31, 1995, ten and one-half percent (10.5%) per year;

“(c) Commencing upon January 1, 1996, and extending through December 31, 2015 for each Category B Unit and December 31, 2018 for each Category A Unit, twelve and one-half percent (12.5%) per year; and

“(d) Commencing on January 1, 2016 for each Category B Unit and on January 1, 2019 for each Category A Unit, and in each case extending through the end of the term, the percentage rate which is the apartment percentages component of the Fair Rental Value of the land and water comprising the Premises, determined in accordance with Section 5.10. In no event, however, shall the percentage actually determined be less than twelve and one-half percent (12.5%) per year, nor greater than fifteen percent (15%) per year.

“(2) The Shadow Rent for each Prepaid Subleased Apartment as of any particular date is as follows:

“(a) As of January 1, 1987, the Shadow Rent for each Apartment Approved for Prepaid Subleases is set forth on Exhibit R attached hereto and made a part hereof (the ‘Initial Shadow Rent’);

“(b) Commencing on January 1, 1988 and continuing on each January 1 thereafter, except as provided in subsections 5.08.B(2)(c), 5.08.B(2)(d) and 5.08.B(3) below with respect to Category A Units only, the Shadow Rent for each Apartment Approved for Prepaid Subleases shall be adjusted based upon the average percentage change in two (2) indices, as more particularly provided in Exhibit V attached hereto and made a part hereof;

“(c) From January 1, 2004 through December 31, 2006, the Shadow Rent for each Category A Unit shall be the same amount as the Shadow Rent for 2003 (i.e., the Shadow Rent shall not be adjusted during such period); and

“(d) Commencing on January 1, 2007 and, subject to subsection 5.08.B(3) below, continuing on each January 1 thereafter throughout the remainder of term, the Shadow Rent for each Category A Unit shall be increased by three and seventy-five-hundredths percent (3.75%).

“(3) Not later than February 1, 2019, County shall perform the ‘Rent Adjustment Analysis’ described in Section II of Exhibit V hereto. If the Rent Adjustment Analysis reveals a ‘Rent Deficiency’ (as defined in Exhibit V) and/or if the ‘Shadow Rent Annual Percentage Increase’ (as defined in Exhibit V) is to be increased pursuant to Section III of Exhibit V, then, effective as of January 1, 2019 and continuing on each January 1 thereafter throughout the remainder of the term, the Shadow Rent attributable to each Category A Unit shall be increased by the fixed percentage (which will be greater than 3.75%) determined pursuant to the procedures specified in and the terms of Exhibit V. If the Rent Adjustment Analysis does not reveal a Rent Deficiency and if no increase in the Shadow Rent Annual Percentage Increase is required under Section III of Exhibit V, then the Shadow Rent shall continue to be increased on each January 1 throughout the remainder of the term at the rate provided in subsection 5.08.B(2)(d) (i.e., 3.75%).

“(4) With respect to the payments required under subsection 5.08.A for the Category A Units for the months of January, February and March of 2019, Lessee shall make such payments on the dates required as though (i) the Shadow Rent was increased by three and seventy-five-hundredths percent (3.75%) on January 1, 2019, and (ii) the applicable percentage under subsection 5.08.B(1) was the same as during 2018. If (x) the Rent Adjustment Analysis and/or the terms of Section III of Exhibit V result in the Shadow Rent being increased by a greater percentage effective as of January 1, 2019, and/or (y) the applicable percentage under subsection 5.08(b)(1) is increased effective as of January 1, 2019 pursuant to Section 5.10, then, in April 2019, Lessee shall pay County, in addition to the monthly payment for that month, the amount necessary to cure the underpayment for the three prior months resulting from the additional increase in Shadow Rent effective as of January 1, 2019 and/or the increase in the applicable percentage under Section 5.08(b)(1) effective as of January 1, 2019.

“(5) Lessee’s obligation to pay a percentage of Shadow Rent for an apartment shall not begin until a Prepaid Sublease is executed for such apartment. After such execution, Lessee’s obligation to pay rent attributable to Prepaid Subleases shall equal the applicable percentage provided in subsection 5.08.B(1) above times the Shadow Rent determined for such apartment. Lessee shall not be obligated to pay a percentage of Shadow Rent for the portion of the Lease Year, if any, occurring prior to the time a Prepaid Sublease was executed with respect to such apartment.”

4.3 Rent Renegotiation. Section 5.10 of the Lease shall be amended and restated as follows:

“5.10. Renegotiation of Minimum Annual Rent and Percentage Rents. The Minimum Annual Rent and Percentage Rents shall be adjusted, except as provided below, to the Fair Rental Value of the land and water comprising the Premises as of the Renegotiation Date, in accordance with this Section 5.10. Notwithstanding anything to the contrary in the remainder of this Section 5.10, however: (i) the only adjustment under this Section 5.10 to the Minimum Annual Rent or the Percentage Rents with respect to any Prepaid Subleases shall be to the ‘applicable percentage’ component of the percentage rent formula, as provided in and subject to subsection 5.10.C; (ii) with respect to the Category A Units only, such adjustment, if any, shall be implemented with any increase resulting from the Rent Adjustment Analysis and be effective as of January 1, 2019; and (iii) with respect to the Category A Units only, subsections 5.10.F and 5.10.G shall not apply thereto.”

4.4 Increase in Administrative Transfer Fee for Prepaid Subleases. The introductory paragraph of Section 5.12 of the Lease (i.e., excluding subsections 5.12.A through 5.12.E) shall be amended and restated as follows:

“5.12 Administrative Transfer Fee – Prepaid Subleases. Each time there is a Change in Ownership, as defined in subsection 5.12.A below, of a Prepaid Sublessee’s interest, Lessee shall collect directly from the Prepaid Sublessee and forward to County an administrative fee equal to the following applicable percentage of the fair market value of the Prepaid Sublease being transferred (‘Administrative Transfer Fee’): (i) for Category A Units, two and one-half percent (2.5%); and (ii) for Category B Units, one percent (1%). The fair market value shall be deemed to be the sales price or other consideration given for the Prepaid Sublease interest being transferred.”

4.5 County Disbursements for Condominium Project Repairs. Article 14 of the Lease shall be amended by adding the following as a new Section 14.05 thereto:

“14.05 Condominium Project Repairs Account.

“14.05.A. Funding and Disbursements. County shall deposit funds into an account (the ‘Condominium Project Repairs Account’) by the dates and in the amounts provided in Exhibit W attached hereto and incorporated herein by this reference. County shall disburse funds from the Condominium Project Repairs Account from time to time for the purpose of

reimbursing Lessee for a portion of the costs of certain repairs and refurbishments to the improvements located on the Premises, including, without limitation, repairs to those improvements leased to Snyder/Marina under the Master Condominium Sublease (the 'Condominium Project'), in each case to the extent allocable to the Category A Units, as more particularly provided and in accordance with the procedures set forth in Exhibit W; provided, however, that funds shall not be disbursed from the Condominium Project Repairs Account for costs applicable to those areas of the Premises actually leased or available for lease by Lessee to third parties under an agreement other than the Master Condominium Sublease, including but not limited to the 101 apartments described in Section 1.04, the 338 boat slips described in Section 1.04, and any retail or commercial space on the Premises. Neither Lessee nor the Owners Association shall have any interest in the Condominium Project Repairs Account, and all funds on deposit therein from time to time shall be and remain the sole property of County until such time as such funds are disbursed from the Condominium Project Repairs Account as provided in Exhibit W. Lessee shall make each of the Covered Repairs (as defined in Exhibit W) that is listed in Part 1 of Schedule 1 to Exhibit W (the 'Priority Repairs') by the applicable dates specified therein; provided, however, that (i) subject to the limitations on extension set forth below, said applicable dates for completing the Priority Repairs shall be extended, and Lessee shall not be in default, on account of delays due to a Force Majeure Condition, and (ii) Lessee shall not be obligated to make the Priority Repairs to the extent that the cost thereof exceeds the quotient of (a) the cumulative amount deposited by County into the Condominium Project Repairs Account plus the interest deemed to have accrued thereon as provided in Exhibit W, divided by (b) the Applicable Percentage (as defined in Exhibit W), in decimal form. If Lessee gives County written notice of the Force Majeure Condition within thirty (30) days after the occurrence thereof, then the applicable dates for completing any affected Priority Repairs shall be extended by the number of days between the commencement of such Force Majeure Condition and the cessation thereof. If such written notice is not given by Lessee within such thirty (30) day period, the applicable dates for completing any affected Priority Repairs shall be extended for the number of days between the date of delivery of the written notice to County of such Force Majeure Condition and the cessation of such Force Majeure Condition. Nothing in this Section 14.05 is intended to modify or limit Lessee's obligations under any other Sections of this Lease with respect to the maintenance and repair of the Premises and the equipment, structures and other improvements thereon, including,

without limitation, Section 14.01, and, except for Lessee's obligation to make the Priority Repairs upon and subject to the terms set forth herein, nothing herein is intended to create, define or expand Lessee's obligations under the Lease with respect to such matters, including, without limitation, to make any repairs in addition to Priority Repairs.

"14.05.B. Lessee's Obligation to Repay Disbursements. On February 28, 2023 (or earlier at Lessee's election), Lessee shall pay County an amount equal to the Disbursed Repair Funds Balance (as defined in Exhibit W), unless the same has previously been reduced to zero pursuant to Exhibit W or separately paid directly to County by the Owners Association."

4.6 Definitions. Section 17.01 of the Lease shall be amended as follows:

4.6.1 In subsection 17.01.D (which contains the definition of "Adjustment Index"), the words "subsection 5.08.B(2)(b)" shall be deleted and replaced with "Exhibit V".

4.6.2 In subsection 17.01.R (which contains the definition of "Beginning Index"), the words "subsection 5.08.B(2)(b)" shall be deleted and replaced with "Exhibit V".

4.6.3 The following shall be added thereto as new subsections 17.01.U-1 and 17.01.U-2, respectively, immediately after subsection 17.01.U (which contains the definition of "Casualty Termination Notice"):

"17.01.U-1. 'CATEGORY A UNIT' shall have the meaning set forth in subsection 5.02.A.

"17.01.U-2. 'CATEGORY B UNIT' shall have the meaning set forth in subsection 5.02.A."

4.6.4 The following shall be added thereto as new subsections 17.01.DD-1 and 17.01.DD-2, respectively, immediately after subsection 17.01.DD (which contains the definition of "Condemnor"):

"17.01.DD-1. 'CONDOMINIUM PROJECT' shall have the meaning set forth in subsection 14.05.A.

"17.01.DD-2. 'CONDOMINIUM PROJECT REPAIRS ACCOUNT' shall have the meaning set forth in subsection 14.05.A."

4.6.5 In subsection 17.01.II (which contains the definition of “CPI Rental Index”), the words “subsection 5.08.B(2)(a)” shall be deleted and replaced with “Exhibit V”.

4.6.6 The following shall be added thereto as new subsection 17.01.KKK-1, immediately after subsection 17.01.KKK (which contains the definition of “Five Authorized Mortgagees”):

“17.01.KKK-1 ‘FORCE MAJEURE CONDITION’ shall mean any event, act, matter or thing beyond the reasonable control of the party to be excused, including, without limitation, war, terrorist acts, insurrection, riots, floods, earthquakes, fires, casualties, acts of God, litigation and administrative proceedings, governmental restrictions, shortages of labor or material, strikes, lockouts, epidemics, quarantine restrictions, freight embargos, lack of transportation, unusually severe weather, acts of a third party, enactment of conflicting state or federal laws or regulations, judicial decisions or similar bases for excused performance which are not within the reasonable control of the party to be excused. Financial inability of a party whose performance is required (other than due to litigation) shall not be a Force Majeure Condition unless (and then only to the extent) such financial inability has resulted from the failure of a Prepaid Sublessee of a Category B Unit to pay any monthly maintenance and/or supplemental maintenance fees payable under its Prepaid Sublease; provided, however, in such event any extension resulting from such Force Majeure Condition shall not exceed one year.”

4.6.7 In subsection 17.01.WWW (which contains the definition of “Initial Shadow Rent”), the words “subsection 5.08.B(1)” shall be deleted and replaced with “subsection 5.08.B(2)(a)”.

4.6.8 The following shall be added thereto as a new subsection 17.01.SSSS-1, immediately after subsection 17.01.SSSS (which contains the definition of “Primary Uses”):

“17.01.SSSS-1 ‘PRIORITY REPAIRS’ shall have the meaning set forth subsection 14.05.A”

4.6.9 In subsection 17.01.DDDDD (which contains the definition of “Research Council Index”), the words “subsection 5.08.B(2)(a)” shall be deleted and replaced with “Exhibit V”.

4.7 Exhibits. Exhibits U-1, U-2, V and W to this Amendment shall be added to the Lease as Exhibits U-1, U-2, V and W thereto.

5. Miscellaneous.

5.1 Lease. The Lease has not been modified, amended or supplemented except as set forth in this Amendment and, as amended by this Amendment, the Lease is and remains in full force and effect.

5.2 Counterparts. This Amendment may be executed in several counterparts, each of which shall be deemed an original, and such counterparts shall constitute but one and the same instrument.

5.3 Governing Law. This Amendment shall be governed by and construed in accordance with the laws of the State of California without giving effect to the conflict of law principles of said state.

5.4 Controlling Provisions. In the event of any inconsistencies between the provisions of this Amendment and the provisions of the Lease, the provisions of this Amendment shall govern and prevail.

5.5 Exhibits. Exhibits U-1 and U-2 to this Amendment shall be completed prior to the Effective Date (if that occurs); Exhibit U-1 shall list those Prepaid Subleases as to which the applicable Prepaid Sublessee makes a timely, affirmative election to be bound by the Modified Terms and Exhibit U-2 shall list all other Prepaid Subleases. All Exhibits attached hereto are incorporated herein as though set forth herein in full.

5.6 Integration and Merger. This Amendment and the Exhibits attached hereto contain the entire agreement of County and Lessee regarding the modification of the Lease and supersede all prior agreements, term sheets and understandings between County and Lessee, whether written or oral, with respect to the modification of the Lease.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the parties have executed this Amendment as of the date first above written.

COUNTY:

COUNTY OF LOS ANGELES

By:

\_\_\_\_\_  
Chairman, Board of Supervisors

ATTEST:

VIOLET VARONA-LUKENS  
Executive Officer-Clerk of the  
Board of Supervisors

By:

\_\_\_\_\_  
Deputy

APPROVED AS TO FORM  
BY COUNTY COUNSEL:

OFFICE OF THE COUNTY COUNSEL

By:

\_\_\_\_\_  
Deputy

APPROVED AS TO FORM:

MUNGER, TOLLES & OLSON LLP

By:

\_\_\_\_\_

[SIGNATURES CONTINUED ON NEXT PAGE]

LESSEE:

ESSEX MARINA CITY CLUB, L.P.,  
a California limited partnership

By: Essex MCC, LLC,  
a Delaware limited liability company,  
its general partner

By: Essex Portfolio, L.P.,  
a California limited partnership,  
its sole member

By: Essex Property Trust, Inc.,  
a Maryland corporation,  
its general partner

By: \_\_\_\_\_  
Gerald E. Kelly,  
Vice President

## JOINDER

The undersigned (the "Owners Association") acknowledges and agrees as follows to and for the benefit of County and Lessee:

1. The Condominium Project Repairs Account and the County's obligation to make disbursements therefrom are subject to the terms and conditions contained in Exhibit W to the Amendment.

2. The Owners Association has no interest in the Condominium Project Repairs Account.

3. The Owners Association hereby approves and authorizes the performance of the Covered Repairs, and shall exercise good faith efforts and cooperate with Lessee to cause the Covered Repairs to be made. Without limitation of the foregoing, the Owners Association, at its own cost and expense, shall cooperate with Lessee and use commercially reasonable efforts, as consistent with the Declaration of Covenants, Conditions and Restrictions for the Marina City Club Owners Association and applicable law, to cause the Condominium Sublessees of the Category B Units to fund their share, based upon their "Operating Expense Percentage" (as such term is defined in the Master Condominium Sublease), of the Covered Repairs made to the Condominium Project.

4. The Owners Association is not a party to or a third-party beneficiary of the Lease or the Amendment, and is executing this Joinder solely for the purposes of evidencing the undersigned's acknowledgement of and agreement to the matters set forth above and with the understanding that Lessee and County are relying upon the covenants of the Owners Association set forth herein in entering into this Amendment.

MARINA CITY CLUB CONDOMINIUM OWNERS  
ASSOCIATION,  
a California nonprofit mutual benefit corporation

Dated: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

Dated: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

EXHIBIT A

Form of Memorandum

RECORDING REQUESTED BY:

AND WHEN RECORDED MAIL TO:

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MEMORANDUM OF AMENDMENT NO. 4  
TO THE SECOND AMENDED AND RESTATED LEASE  
(IMPROVED PARCEL) NO. 55624,  
PARCEL NO. 125R – MARINA DEL REY SMALL CRAFT HARBOR

THIS MEMORANDUM OF AMENDMENT NO. 4 TO THE SECOND AMENDED AND RESTATED LEASE (IMPROVED PARCEL) NO. 55624, PARCEL NO. 125R – MARINA DEL REY SMALL CRAFT HARBOR (this “Memorandum”) is made and entered into as of \_\_\_\_\_, 2004 by and between COUNTY OF LOS ANGELES (“County”) and ESSEX MARINA CITY CLUB, L.P., a California limited partnership, as successor in interest to Marina City Club, L.P., a California limited partnership (f/k/a J.H. Snyder Company) (“Lessee”), with reference to the following facts:

RECITALS

A. County and Marina City Club, L.P., a California limited partnership (“Original Lessee”), entered into that certain Second Amended and Restated Lease [Improved Parcel] dated October 27, 1987 and identified as Lease No. 55624 (the “Original Lease”), as amended by (i) that certain First Amendment to the Second Amended and Restated Lease (Improved Parcel) No. 55624 Parcel 125R Marina del Rey dated November 4, 1988, (ii) that certain Second Amendment to the Second Amended and Restated Lease (Improved Parcel) No. 55624 Parcel 125R - Marina del Rey dated August 1, 1992, and (iii) that certain Amendment No. 3 to the Second Amended and Restated Lease (Improved Parcel) No. 55624 Parcel 125R – Marina del Rey Small Craft Harbor dated December 3, 2002 (the Original Lease, as so amended, is hereinafter referred to as the “Lease”). A memorandum of the Original Lease was recorded in the Official Records of Los Angeles County, California (the “Official Records”) on January 26, 1988 as Instrument No. 88-11960.

B. Lessee acquired all of Original Lessee's right, title and interest in and to, and assumed Original Lessee's obligations under, the Lease effective as of January 21, 2004, pursuant to that certain Assignment of Lease dated as of December 11, 2003 and that certain Acceptance of Assignment of Lease dated as of December 18, 2003, a memorandum of which was recorded in the Official Records on January 22, 2004 as Instrument No. 04-0144363.

C. County and Lessee have amended the Lease as provided in that certain Amendment No. 4 to the Second Amended and Restated Lease (Improved Parcel) No. 55624, Parcel No. 125R - Marina del Rey Small Craft Harbor dated as of \_\_\_\_\_, 2004 and effective of even date herewith (the "Lease Amendment"), and desire to provide notice to third parties of the Lease Amendment.

NOW, THEREFORE, with reference to the foregoing recitals, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, County and Lessee hereby agree as follows:

1. The purpose of this Memorandum is to give notice to third parties of the existence of the Lease Amendment. The exact terms and conditions of the Lease Amendment are contained therein and are incorporated herein by this reference. However, the terms of the Lease Amendment include, among others, amending the Lease to add four new exhibits thereto, which exhibits are labeled as "Exhibit U-1", "Exhibit U-2", "Exhibit V" and "Exhibit W", respectively, and are attached to this Memorandum.
2. If any of the terms or provisions of this Memorandum conflict or are inconsistent with the terms and provisions of the Lease Amendment, the terms and provisions of the Lease Amendment shall prevail.
3. The Lease has not been modified, amended or supplemented except as set forth in the Lease Amendment and, as amended by the Lease Amendment, the Lease is and remains in full force and effect.
4. This Memorandum may be executed in several counterparts, each of which shall be deemed an original, and such counterparts shall constitute but one and the same instrument.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the parties have executed this Amendment as of the date first above written.

COUNTY: COUNTY OF LOS ANGELES

By: \_\_\_\_\_  
Chairman, Board of Supervisors

ATTEST:

VIOLET VARONA-LUKENS  
Executive Officer-Clerk of the  
Board of Supervisors

By: \_\_\_\_\_  
Deputy

APPROVED AS TO FORM  
BY COUNTY COUNSEL:

OFFICE OF THE COUNTY COUNSEL

By: \_\_\_\_\_  
Deputy

LESSEE: ESSEX MARINA CITY CLUB, L.P.,  
a California limited partnership

By: Essex MCC, LLC,  
a Delaware limited liability company,  
its general partner

By: Essex Portfolio, L.P.,  
a California limited partnership,  
its sole member

By: Essex Property Trust, Inc.,  
a Maryland corporation,  
its general partner

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

## EXHIBIT B

### Amendment Conditions

1. The execution of this Amendment and each of the other documents contemplated hereby shall have been approved by County's Board of Supervisors.
2. The Owners Association shall have executed the Joinder attached to this Amendment.
3. The execution of this Amendment shall have been approved by each Approved Encumbrance Holder, if any.
4. The number of Category A Units must be at least four hundred eighty (480).
5. An Amendment to Condominium Sublease and Condominium Subleasehold Deed of Trust and Assignment of Rents in the form attached to this Amendment as Exhibit C (each a "Condominium Sublease Amendment") shall have been duly executed and delivered with respect to each of the Category A Units (i.e., by the Prepaid Sublessee of each such unit and by each beneficiary under a deed of trust, mortgagee under a mortgage or other like lienholder holding an encumbrance on each such unit, including, without limitation, any Authorized Mortgagees (as defined in the Master Condominium Sublease) holding a lien on such unit).
6. Lessee shall have received an endorsement to its existing title policies or other form of title assurance from Chicago Title Insurance Company, at no cost to County or Lessee and in form and substance acceptable to Lessee, insuring Lessee, among other things, of the continued priority of each Subleasehold Deed of Trust (as defined in the Master Condominium Sublease) (i) on the Category A Units following execution of this Amendment and the Condominium Sublease Amendments for those units, and (ii) on the Category B Units following execution of this Amendment. Such title insurance must also insure that the amendments described in the previous sentence do not impair Lessee's rights as lessee under the Lease or as sublessor under the Master Condominium Sublease with respect to the Category B Units.
7. Counsel to the Owners Association shall have delivered to County a legal opinion, in form and substance satisfactory to County, that provides that the Prepaid Subleases for the Category B Units permit Lessee to collect monthly maintenance fees and/or supplemental maintenance fees with respect to those (and only those) Prepaid Subleases that are Category B Units and that the payment obligation of each such Category B Unit Prepaid Sublessee is secured by the Subleasehold Deed of Trust against its unit. County shall waive the condition in this paragraph 7 if the number of Category A Units is at least five hundred seventy (570).
8. Lessee shall have consented in writing either to a permanent and exclusive easement reserved by County, pursuant to a Declaration of Easement in form and substance satisfactory to County and Lessee, or a modification of the legal description of the Lease which, in either case, permits County to widen the waterfront promenade.
9. If this Amendment becomes effective after June 30, 2004, then, for each Change in Ownership of a Prepaid Sublessee's interest as to a Category A Unit that occurs after such

date, Lessee shall have paid County the sum of (i) 1.5% of the sales price or other consideration given for such Change in Ownership (in addition to the 1% Administrative Transfer Fee collected by Lessee for County's benefit at the time of such Change in Ownership), plus (ii) interest on the amount described in clause (i) from and after the date of such Change in Ownership until the date of payment at the rate equal to the investment yield earned on the County's Treasury Pool during such period, as contained in County's Report of Investments covering such period. As stated above, the additional 1.5% Change in Ownership payment shall not be applicable to any Change in Ownership of a Prepaid Sublessee's interest as to a Category B Unit or any Change in Ownership of any Prepaid Sublease that occurs prior to July 1, 2004.

10. All conditions to the effectiveness of the Condominium Sublease Amendment contained therein (other than effectiveness of the modifications to the Lease contained in this Amendment) shall have been satisfied with respect to at least four hundred eighty (480) of the Category A Units.

11. On the date on which each of the other Amendment Conditions has been satisfied or waived, Lessee's representations and warranties in Paragraph 3 of the Amendment shall be and remain true and correct.

12. County, Lessee and the Owner's Association shall have agreed on an updated list of the Covered Repairs, including project description, preliminary scope of work and preliminary specifications for each of the Covered Repairs. When completed, the updated list of Covered Repairs shall be substituted into Exhibit W to this Amendment as a new Schedule 1 thereto in place of Schedule 1 currently attached thereto.

13. On or before May 14, 2004, Lessee and the Owners Association shall have notified County in writing that they have entered into an agreement concerning the implementation of the terms of this Amendment.

EXHIBIT C

Form of Condominium Sublease Amendment

RECORDING REQUESTED BY:

AND WHEN RECORDED MAIL TO:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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AMENDMENT TO CONDOMINIUM SUBLEASE  
AND CONDOMINIUM SUBLEASEHOLD DEED OF  
TRUST AND ASSIGNMENT OF RENTS AND  
CONSENT AND AGREEMENT OF JUNIOR LENDER  
FOR UNIT NO. \_\_\_\_\_  
OF THE MARINA CITY CLUB CONDOMINIUMS

THIS AMENDMENT TO CONDOMINIUM SUBLEASE AND CONDOMINIUM  
SUBLEASEHOLD DEED OF TRUST AND ASSIGNMENT OF RENTS AND CONSENT  
AND AGREEMENT OF JUNIOR LENDER (this "Amendment") is made and entered into as of  
the \_\_\_\_ day of \_\_\_\_, 2004, by and between ESSEX MARINA CITY CLUB, L.P., a California  
limited partnership, as successor in interest to Marina City Club, L.P., a California limited  
partnership (f/k/a J.H. Snyder Company) ("Sublessor"), and  
\_\_\_\_ ("Condominium Sublessee"), with reference to the  
following facts:

RECITALS

A. This Amendment affects unit no. \_\_\_\_\_ (the "Unit") in the residential  
condominium project located in Marina del Rey, California commonly known as the Marina City  
Club Condominiums, as shown in that certain Condominium Plan recorded in the Official  
Records of Los Angeles County, California (the "Official Records") on January 11, 1988 as  
Instrument No. 88-33404 (the "Condominium Plan"). Except as otherwise provided herein,  
including Recital I below, all initially-capitalized terms used but not defined in this Amendment  
have the meanings given such terms in the Subject Condominium Sublease (as defined in Recital  
E below).

B. Sublessor, as successor in interest to Marina City Club, L.P., a California limited  
partnership ("Original Sublessor"), is the lessee of certain real property located in the Marina del  
Rey Small Craft Harbor of the County of Los Angeles, California (the "Improved Parcel") under  
that certain Second Amended and Restated Lease [Improved Parcel] dated October 27, 1987  
between the County of Los Angeles ("County"), as lessor, and Original Sublessor, as lessee, and

identified as Lease No. 55624 (the "Original Master Lease"), as amended by the following agreements, each between County and Original Sublessor: (i) that certain First Amendment to the Second Amended and Restated Lease (Improved Parcel) No. 55624 Parcel 125R Marina del Rey dated November 4, 1988; (ii) that certain Second Amendment to the Second Amended and Restated Lease (Improved Parcel) No. 55624 Parcel 125R - Marina Del Rey dated August 1, 1992; and (iii) that certain Amendment No. 3 to the Second Amended and Restated Lease (Improved Parcel) No. 55624 Parcel 125R - Marina del Rey Small Craft Harbor dated December 3, 2002 (the Original Master Lease, as so amended, is hereinafter referred to as the "Existing Master Lease"). Lessee acquired all of Original Lessee's right, title and interest in and to, and assumed Original Lessee's obligations under, the Existing Master Lease effective as of January 21, 2004, pursuant to that certain Assignment of Lease dated as of December 11, 2003 and that certain Acceptance of Assignment of Lease dated as of December 18, 2003, a memorandum of which was recorded in the Official Records on January 22, 2004 as Instrument No. 04-0144363.

C. Pursuant to that certain Master Condominium Sublease dated as of January 5, 1988 between Original Sublessor, as sublessor, and Marina City Condominiums, a California limited partnership ("Master Sublessee"), as sublessee (the "Original Master Condominium Sublease"), a memorandum of which was recorded in the Official Records on February 9, 1988 as Instrument No. 88-176672 (the "Memorandum"), Sublessor subleased to Master Sublessee, and Master Sublessee subleased from Sublessor, certain portions of the Improved Parcel consisting of certain common areas, appurtenant rights and interior space within three high-rise towers then commonly known as the Marina City Club Tower Apartments and as depicted in the Condominium Plan. Master Sublessee thereafter established a subleasehold condominium regime with respect to the premises subleased by it under the Original Master Condominium Sublease by, among other things, and in addition to recording the Condominium Plan, (i) causing the formation of the Marina City Club Condominium Owners Association (the "Association") and the adoption of bylaws for the Association, and (ii) executing, and subjecting the Premises to, that certain First Amended and Restated Declaration of Covenants, Conditions and Restrictions Establishing a Plan of Subleasehold Condominium Ownership for the Marina City Club Condominiums dated as of January 5, 1988 and recorded in the Official Records on January 11, 1988 as Instrument No. 88-037715.

D. Original Sublessor and Master Sublessee thereafter amended the Original Master Condominium Sublease as provided in that certain Amendment to Memorandum of Master Condominium Sublease and First Amendment to Master Condominium Sublease dated as of April 25, 1988 and recorded in the Official Records on May 26, 1988 as Instrument No. 88-843738 (the Original Master Condominium Sublease, as so amended, is hereinafter referred to as the "Master Condominium Sublease").

E. As permitted under the Master Condominium Sublease, after the establishment of the subleasehold condominium regime, Master Sublessee assigned all of its subleasehold interest under the Master Condominium Sublease on a condominium-by-condominium basis to individual condominium sublessees and, accordingly, Master Sublessee no longer has any interest in the Master Condominium Sublease. Each initial individual condominium sublessee was assigned, as to a particular condominium unit, the subleasehold estate in such unit together with the undivided subleasehold interest in the Common Area and the Appurtenant Rights applicable to such unit, as more particularly described in the Assignment and Assumption of

Condominium Sublease for the Marina City Club Tower Apartments between Master Sublessee and such initial condominium sublessee and recorded in the Official Records (each an "Original Assignment"); as to each condominium unit, the Master Condominium Sublease and the applicable Original Assignment together constitute the "Condominium Sublease". Concurrently with the execution of the Original Assignment for the Unit and as security for the payment of certain obligations under the Condominium Sublease for the Unit (the "Subject Condominium Sublease"), the initial condominium sublessee executed that certain Condominium Subleasehold Deed of Trust and Assignment of Rents in favor of Original Sublessor, as beneficiary, and recorded in the Official Records on \_\_\_\_\_, 19\_\_ as Instrument No. \_\_\_\_\_ (the "Subject Subleasehold Deed of Trust").

F. Condominium Sublessee is the current holder of the sublessee's interest in the Subject Condominium Sublease, and Sublessor is the current holder of the sublessor's interest in the Subject Condominium Sublease and the beneficial interest in the Subject Subleasehold Deed of Trust.

G. Under the terms of the Subject Condominium Sublease, Condominium Sublessee's interest in the "Subject Condominium" described therein (which consists of the subleasehold estate in the Unit and an undivided subleasehold interest in the Common Area and the related Appurtenant Rights, all as more particularly described therein) is subject to, and Condominium Sublessee is obligated to perform all applicable obligations or duties imposed by, among other things, the Existing Master Lease and the Master Condominium Sublease.

H. The Subject Condominium Sublease requires Condominium Sublessee to pay, among other things, (i) monthly Ground Rent to Sublessor, which Ground Rent is based on the Shadow Rent and the Applicable Percentage and is subject to annual adjustment as provided in the Master Condominium Sublease, and (ii) a Change in Ownership Fee upon a Change in Ownership.

I. The initially-capitalized terms that appear in quotation marks in this Recital I but are not defined herein have the meanings given such terms in the Master Lease (as defined below). Concurrently herewith, County and Sublessor are amending the Existing Master Lease to, among other things,

(i) freeze the "Shadow Rent" thereunder attributable to the Unit (which affects the amount of the rent to be paid by Sublessor to County) at its 2003 level through December 31, 2006,

(ii) provide that, commencing January 1, 2007 and continuing each year thereafter until at least January 1, 2018, such "Shadow Rent" attributable to the Unit shall be increased by an amount equal to 3.75% of the prior year's "Shadow Rent",

(iii) delay implementing the increase in the applicable percentage component of the formula that determines the "Percentage Rent" attributable to the Unit from 2016 until 2019,

(iv) provide that, effective as of January 1, 2019 and continuing each year thereafter during the remainder of the term, the "Shadow Rent" attributable to the

Unit may (but shall not necessarily) be increased by a fixed percentage greater than 3.75%,

(v) increase the "Administrative Transfer Fee" payable to County upon a "Change in Ownership" of the "Prepaid Sublessee's interest" with respect to the Unit to an amount equal to 2.5% of the gross sales price or other consideration for the applicable transaction (in addition to any similar fee otherwise payable to Sublessor for its own account), and

(vi) provide that, on February 28, 2023, Sublessor shall be required to pay County an amount equal to the outstanding "Disbursed Repair Funds Balance" thereunder (the "2023 Special Payment"), if any,

all as more particularly provided in that certain Amendment No. 4 to the Second Amended and Restated Lease (Improved Parcel) No. 55624, Parcel No. 125R-Marina del Rey Small Craft Harbor (the "Master Lease Amendment"; the Existing Master Lease, as amended by the Master Lease Amendment, is hereinafter referred to as the "Master Lease"), a memorandum of which has been or will be recorded in the Official Records concurrently with the recordation of this Amendment.

J. Sublessor and Condominium Sublessee desire to amend (i) the Subject Condominium Sublease to reflect the terms of the Master Lease Amendment, and (ii) the Subleasehold Deed of Trust to reflect the amendments to the Subject Condominium Sublease contained in this Amendment, all as more particularly provided in this Amendment.

NOW, THEREFORE, with reference to the foregoing Recitals and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Sublessor and Condominium Sublessee hereby agree as follows:

1. Representations and Warranties by Condominium Sublessee. Condominium Sublessee hereby represents and warrants to Sublessor as follows:

(i) Condominium Sublessee is the current owner of the Subject Condominium Sublease and each of the Subject Condominium Sublease and the Subject Subleasehold Deed of Trust is in full force and effect; [and]

(ii) the Subject Condominium Sublease is not currently encumbered by or subject to any deed of trust, mortgage or similar security instrument (each a "Mortgage") granted, assumed or taken subject to by Condominium Sublessee, except for (a) the Subject Subleasehold Deed of Trust and (b) the Mortgage or Mortgages in favor of the lender or lenders identified on any Consent of Lender attached hereto; [and]

(iii) *[Note: this clause (iii) will be included if this Amendment will not be effective until after June 30, 2004]* there has been no Change in Ownership of the Condominium Sublease since June 30, 2004, except for the Change(s) of Ownership, if any, described in Exhibit L hereto. For each Change in Ownership of the Condominium Sublease occurring after June 30, 2004, Condominium Sublessee has paid Sublessor a Change in Ownership Fee equal to

three percent (3%) of the total purchase price or other consideration given for such Change in Ownership.

2. Effect of Other Agreements. Condominium Sublessee hereby agrees that the Subject Condominium Sublease and Condominium Sublessee's interest in the Unit and its other rights thereunder are subject to, and Condominium Sublessee shall perform all applicable duties or obligations imposed by, the Master Lease (as amended as recited in Recital I of this Amendment) and each of the other agreements or instruments described in Section 1.3 of the Original Assignment recorded with respect to the Unit.

3. Conditions to Effectiveness of Amendments to Subject Condominium Sublease. The amendments to the Subject Condominium Sublease and to the Subject Subleasehold Deed of Trust set forth in this Amendment shall not be effective unless and until each of the following shall have occurred: (i) the modifications to the Existing Master Lease contained in the Master Lease Amendment shall have become effective not later than the "Outside Date" specified therein, with said effectiveness to be evidenced by the recordation of a memorandum of the Master Lease Amendment in the Official Records; (ii) each Consent of Lender attached hereto shall have been executed by the applicable lender and Sublessor shall have received a satisfactory endorsement to its lender's policy of title insurance that assures Sublessor, among other things, that the Subject Subleasehold Deed of Trust continues to constitute a first-priority lien against the Subject Condominium Sublease, without any additional exceptions thereto; (iii) the conditions in Section 7 of this Amendment shall have been satisfied; and (iv) this Amendment shall have been recorded in the Official Records. When such amendments become effective (if that occurs), the Unit shall be a "Category A Unit" for purposes of the Master Lease.

4. Amendments to Master Condominium Sublease. The Master Condominium Sublease, as it relates to the Unit, is hereby amended as follows:

4.1 Applicable Percentages for Ground Rent. Section 4.4.2 of the Master Condominium Sublease is hereby amended and restated as follows:

"4.4.2 Applicable Percentages. The Applicable Percentage of Shadow Rent to be paid by each Condominium Sublessee shall be equal to the following: (a) from the commencement of the term of its Condominium Sublease through December 31, 1995, ten and one-half percent (10.5%); (b) commencing upon January 1, 1996, and extending through December 31, 2018, twelve and one-half percent (12.5%); and (c) commencing on January 1, 2019, and extending through the end of the term of the Condominium Sublease, the percentage rate determined in accordance with Section 5.08.B(1)(d) of the Master Lease; provided, however, that such percentage shall not be less than twelve and one-half percent (12.5%) nor more than fifteen percent (15%)."

4.2 Determination of Shadow Rent Through 2003. The introductory paragraph of Section 4.4.3 of the Master Condominium Sublease (i.e., excluding subsections (a) through (h) thereof) is hereby amended and restated as follows:

“4.4.3. Determination of Shadow Rent Through 2003. The Shadow Rent applicable to each Condominium for its Base Year shall be the amount therefor set forth on the applicable Assignment and Assumption of Condominium Sublease. Prior to 2004, the Shadow Rent for each Condominium shall be adjusted as of January 1 of each year during the term of the Condominium Sublease for that Condominium based upon the average percentage change in two (2) indices as follows:”

4.3 Shadow Rent for 2004 through 2006. The following is hereby added to the Master Condominium Sublease as a new Section 4.4.4 thereto:

“4.4.4 Shadow Rent for 2004 Through 2006. From January 1, 2004 through December 31, 2006, the Shadow Rent for each Condominium shall be the same amount as the Shadow Rent for such Condominium for 2003, as shown on Exhibit K attached hereto (i.e., the Shadow Rent shall not be adjusted during such period).”

4.4 Shadow Rent From and After 2007. The following is hereby added to the Master Condominium Sublease as a new Section 4.4.5 thereto:

“4.4.5 Shadow Rent for 2007 Through At Least 2018. Commencing on January 1, 2007 and, subject to Section 4.4.6, continuing on each January 1 thereafter during the term of the Condominium Sublease for each Condominium, the Shadow Rent for each Condominium shall be increased three and seventy-five-hundredths percent (3.75%).”

4.5 Possible Adjustment to Shadow Rent in 2019. The following is hereby added to the Master Condominium Sublease as a new Section 4.4.6 thereto:

“4.4.6 Possible Adjustment to Shadow Rent in 2019. The Master Lease provides that, in 2019, (i) the County (as lessor thereunder) will perform a ‘Rent Adjustment Analysis’, (ii) if the Rent Adjustment Analysis reveals a ‘Rent Deficiency’, then, effective as of January 1, 2019 and continuing on each January 1 thereafter during the remainder of the term of the Master Lease, the ‘Shadow Rent’ under the Master Lease (the ‘Master Lease Shadow Rent’) shall be increased by the fixed rate (which will be greater than 3.75%) determined as part of the Rent Adjustment Analysis, and (iii) the Master Lease Shadow Rent also shall be increased (in addition to any increase resulting from the Rent Adjustment

Analysis) effective as of January 1, 2019 and continuing on each January 1 thereafter during the remainder of the term of the Master Lease by the amount, if any, necessary to enable the County to recover certain 'lost rent' under the Master Lease for the years 2016, 2017 and 2018 as a result of the County's agreement to delay a potential rent increase from 2016 until 2019. The procedures for determining the new fixed percentage for the annual increase in the Master Lease Shadow Rent (the 'Adjusted Fixed Percentage') to be effective as of January 1, 2019, based on the Rent Adjustment Analysis and the County's rent loss, if any, for the years 2016, 2017 and 2018, are set forth in Exhibit V of the Master Lease; the terms of said Exhibit V are attached to a memorandum of an amendment to the Master Lease recorded in the Official Records of Los Angeles County, California.

"If the percentage for determining the annual increase in the Master Lease Shadow Rent is increased (i.e., from 3.75% to the Adjusted Fixed Percentage) as of January 1, 2019 as provided above, then, effective as of January 1, 2019 and continuing on each January 1 thereafter during the term of the Condominium Sublease for each Condominium, the Shadow Rent for each Condominium shall be increased by the Adjusted Fixed Percentage.

"With respect to the Ground Rent payments required under Section 4.4.1 for the months of January, February and March of 2019, each Condominium Sublessee shall make such payments on the dates required as though (i) the Shadow Rent was increased by three and seventy-five-hundredths percent (3.75%) on January 1, 2019, and (ii) the Applicable Percentage was the same as during 2018. If (x) the Shadow Rent is increased by the Adjusted Fixed Percentage effective as of January 1, 2019 as provided in Exhibit V of the Master Lease, and/or (y) the Applicable Percentage is increased effective as of January 1, 2019 as provided in Section 5.08.B(1)(d) of the Master Lease, then, in April 2019, each Condominium Sublessee shall pay Sublessor or the Management Company, as applicable, in addition to the Ground Rent and any other payments for that month, the amount necessary to cure the underpayment of Ground Rent for the prior three months."

4.6 Increase in Change in Ownership Fee. Section 4.5 of the Master Condominium Sublease is hereby amended and restated as follows:

"4.5 Change in Ownership Fee. As additional consideration for this Sublease, if there is a Change in Ownership of any Condominium Sublease following the creation thereof which is not otherwise exempted by Section 14.2 below, the Condominium Sublessee whose interest is the subject of the

Change of Ownership, or such Condominium Sublessee's transferee, shall pay an amount (the 'Change in Ownership Fee') to Sublessor equal to three percent (3%) of the total sales price or other consideration given for the Condominium Sublease interest being transferred, without reduction for any cost or charge incurred by such Condominium Sublessee or its transferees (and Sublessor shall pay five-sixths (5/6) of such fee to the County, pursuant to Section 5.12 of the Master Lease), on or before the closing or effective date of such Change in Ownership. The payment of this fee shall be the joint and several obligation of both the transferor and transferee of the Condominium Sublessee's Condominium Sublease, and all agreements with such transferees shall provide for such joint and several liability."

4.7 Potential Additional Payment Obligation in 2023. Section 4.6 of the Master Condominium Sublease (captioned "Exemption from Payments; All Payments Directly to Master Sublessor") is hereby renumbered as Section 4.7, and the following is hereby added as a new Section 4.6:

"4.6 Potential Additional Payment Obligation in 2023.

"The Master Lease provides that (i) the County will disburse certain funds to reimburse Sublessor for a portion of the costs of certain repairs and refurbishments to certain portions of the Property, (ii) all amounts so disbursed will bear interest, and (iii) on February 28, 2023, Sublessor must pay the County an amount equal to the sum of all amounts so disbursed and all accrued interest thereon (the 'Disbursed Repair Funds Balance') to the extent that the Disbursed Repair Funds Balance has not previously been reduced to zero, all as more particularly provided in Exhibit W to the Master Lease; the terms of said Exhibit W are attached to a memorandum of an amendment to the Master Lease recorded in the Official Records of Los Angeles County, California.

"If the Disbursed Repair Funds Balance has not been reduced to zero as provided in the Master Lease as of December 31, 2022, then, on such date, unless the Association has separately paid County an amount equal to the Disbursed Repair Funds Balance, each Condominium Sublessee shall pay Sublessor an amount equal to the product of (i) the Disbursed Repair Funds Balance, and (ii) the Operating Expense Percentage applicable to its Condominium. Each Condominium Sublessee's obligation to make any such payment (the "2023 Special Payment") is one of the Accrued Monetary Obligations (see Section 16.3 hereof) of such Condominium Sublessee, and the failure by any Condominium Sublessee to make any such 2023 Special Payment

as required shall constitute an Event of Default under Section 16.1.2 hereof.”

4.8 Events of Default. Section 16.1.2 of the Master Condominium Sublease is hereby amended and restated as follows:

“16.1.2 A Condominium Sublessee fails to pay any installment of the Monthly Maintenance Fee, Supplemental Maintenance Fee, Change in Ownership Fee, taxes and assessments, Ground Rent, the 2023 Special Payment, or any other sum payable by such Condominium Sublessee to Sublessor hereunder when due;”

4.9 Security for Monetary Obligations. The first sentence of Section 16.3 of the Master Condominium Sublease is hereby amended and restated as follows:

“16.3 Monetary Obligations to be Secured by Deed of Trust or Security Agreement.

All obligations of a Condominium Sublessee under this Sublease or any amendment hereto which may be fully satisfied, performed or discharged solely by the payment of money, including without limitation the payment of Monthly Maintenance Fees, Supplemental Maintenance Fees, Ground Rent, Change in Ownership Fees, the 2023 Special Payment (if applicable), the Indemnity Obligations (as defined in the Amendment to Condominium Sublease and Condominium Subleasehold Deed of Trust and Assignment of Rents dated as of or about \_\_\_\_\_, 2004 (the ‘First Amendment’)), the Shared Obligations (as defined in the First Amendment), property taxes, possessory interest taxes or their equivalent, assessments, monetary indemnification obligations, and reimbursements to Sublessor for the payment of utility charges, repair costs or other amounts advanced by Sublessor on behalf of a Sublessee as provided in this Sublease, as such obligations shall accrue and be payable from time to time, and a Sublessee’s obligations under Section 3.3 of the Subleasehold Deed of Trust (hereinafter referred to collectively as ‘Accrued Monetary Obligations’), shall be secured by a Deed of Trust in the form attached hereto as Exhibit J (the ‘Subleasehold Deed of Trust’) encumbering such Sublessee’s Condominium.”

4.10 Exhibits. Exhibit K [and Exhibit L, if applicable] to this Amendment is hereby added to the Master Condominium Sublease as Exhibit K [and Exhibit L, if applicable] thereto.

5. Amendment to Original Assignment. Section 12 of the Original Assignment for the Unit is hereby amended and restated as follows:

“12. Further Transfer. Condominium Sublessee shall not transfer or assign its interest hereunder except as provided in, and subject to the terms, covenants, conditions and restrictions set forth in, Article 14 of the Master Condominium Sublease. Condominium Sublessee acknowledges that, upon a transfer or assignment of its interest in the Subject Condominium constituting a ‘Change of Ownership’ as defined in Section 14.2 of the Master Condominium Sublease, the Condominium Sublessee and its transferee shall be jointly and severally liable for payment to Sublessor of a Change in Ownership Fee equal to three percent (3%) of the total sales price or other consideration given for the Condominium Sublease interest being transferred in accordance with and as more particularly set forth in Section 4.5 of the Master Condominium Sublease.”

6. Amendment to Subleasehold Deed of Trust. Condominium Sublessee hereby confirms and agrees, and to the extent necessary the Subject Subleasehold Deed of Trust is hereby amended to provide, that the Subleasehold Deed of Trust does and shall secure the payment by Condominium Sublessee of all Accrued Monetary Obligations (as defined in Section 16.3 of the Subject Condominium Sublease, as amended by this Amendment) arising from time to time under the Subject Condominium Sublease, including, without limitation, Condominium Sublessee’s obligation to pay the 2023 Special Payment, the increased Change in Ownership Fee described in this Amendment, any Indemnity Obligations (as defined below) and any Shared Obligations (as defined below).

7. Additional Conditions to Effectiveness. Notwithstanding anything in this Amendment to the contrary and notwithstanding the execution hereof, it shall be a condition to the effectiveness of this Amendment that (i) the Prepaid Sublease (as such term is defined in the Master Lease) of the Condominium Sublessee who is a party to this Amendment shall have been originally created as, or subsequently converted to, a Condominium Sublease (i.e., that the Condominium Sublessee’s interest does not constitute a Prepaid Sublease created pursuant to the Approved Prepaid Sublease Form which has not yet been converted to a Condominium Sublease in accordance with the form of documentation approved by the County and Original Sublessor), and (ii) the Condominium Sublessee shall have paid to Sublessor all Change in Ownership Fees required by the terms of the Condominium Sublease *[if this Amendment is executed after June 30, 2004;]* including, without limitation, all Change in Ownership Fees necessary to render the representation and warranties of Condominium Sublessee set forth in Section 1(iii) above true and accurate]. If either of the foregoing conditions has not been met, this Amendment shall be of no force or effect, any attempted election by the Condominium Sublessee to be treated as a Category A Unit shall be void and without effect, and Condominium Sublessee’s Condominium Sublease shall remain a Category B Unit subject to all terms applicable to those units.

8. Waiver of Subordination Rights. Until the Disbursed Repair Funds Balance has been reduced to zero, Condominium Sublessee hereby waives, relinquishes and surrenders any right it may now or hereafter have to require subordination of the Subleasehold Deed of Trust encumbering its Unit to any other Mortgage or other financing encumbering the Subject Condominium Sublease on any terms or for any purpose, including, without limitation, its right,

if any, to request or require such subordination pursuant to the terms of that certain Agreement Regarding Settlement of Pending Litigation between the Association and Original Sublessor *et al*, dated as of June 30, 1994 (the "1994 Settlement Agreement").

9. Indemnity. Condominium Sublessee acknowledges that the Master Lease Amendment and this Amendment were requested by the Condominium Sublessees of the Category A Units in order to achieve the benefits to them resulting from the modifications contained therein and herein. Condominium Sublessee, together with the other Condominium Sublessees of the Category A Units, hereby agrees to indemnify, defend and hold Sublessor harmless, to the extent set forth in the subsequent sentence, from and against any and all costs and expenses (including costs of suit, reasonable attorneys' fees and judgments) relating to any claims, demands, causes of action, liabilities or losses arising from or in connection with any challenge based upon (a) any expenditure from the Towers Reserve Account (as defined below) prior to the date of the Master Lease Amendment or (b) any funds hereafter paid by Sublessor to the Association from the Disbursed Repair Funds (as defined in the Master Lease) (collectively, the "Indemnity Obligations"). All Indemnity Obligations shall be charged to the Condominium Sublessees of the Category A Units in accordance with their respective Operating Expense Percentages and shall constitute Accrued Monetary Obligations under Section 16.3 of the Condominium Sublease, the payment of which is secured by the Subleasehold Deed of Trust encumbering Condominium Sublessee's Unit. Except as otherwise provided above with respect to the Indemnity Obligations, if the Master Lease Amendment, this Amendment and/or any other related documents are challenged in any manner by any party, and if Sublessor elects or is required to participate in any such legal proceeding, then all (costs of suit, attorneys' fees and expert or consultant costs incurred by Sublessor, on the one hand, and the Association and the Condominium Sublessees of the Category A Units acting collectively, on the other hand, relating to the defense or prosecution of such challenge shall be borne equally by the Condominium Sublessees of the Category A Units, on the one hand, and Sublessor, on the other hand (collectively, the "Shared Obligations"); provided, however, that (i) in the event the foregoing provision is applicable, shared attorneys' fees shall consist of not more than one (1) firm representing Sublessor and not more than one (1) firm representing the Association and the Condominium Sublessees of the Category A Units acting collectively, and (ii) the foregoing shall not be enforceable against the County if it succeeds to Sublessor's interest as sublessor under the Condominium Subleases. If the preceding sentence is applicable, the Association, the Condominium Sublessees of the Category A Units and Sublessor shall reasonably cooperate to minimize the costs and expenses of such legal proceedings. The portion of all Shared Obligations allocable to the Category A Units shall be charged to the Condominium Sublessees of the Category A Units in accordance with their respective Operating Expense Percentages and shall constitute Accrued Monetary Obligations under Section 16.3 of the Condominium Sublease, the payment of which is secured by the Subleasehold Deed of Trust encumbering Condominium Sublessee's Unit. The Indemnity Obligations and the Shared Obligations are not intended, and shall not be deemed, to apply to the Condominium Sublessees of the Category B Units. As used herein, the "Towers Reserve Account" shall have the same meaning given such term in the 1994 Settlement Agreement.

10. Acknowledgements Regarding Covered Repairs. Condominium Sublessee acknowledges and agrees that, unless and until Sublessor has received all funds, including, without limitation, all reimbursements for the benefit of "Category A Units" and the funds from

the "Category B Units" (as such terms are defined in the Master Lease) which are necessary to fund further "Covered Repairs" (as defined in the Master Lease), Sublessor will have no obligation to Condominium Sublessee to proceed with such Covered Repairs. Condominium Sublessee also acknowledges and agrees that the timing of the funding and/or completion of the Covered Repairs and/or the ultimate expenditure of less than all of the Condominium Project Repairs Account (as such term is defined in the Master Lease) on the Covered Repairs shall not constitute a condition to the effectiveness of the balance of this Amendment or any provision hereof, and the timing, amount or scope of any expenditures from the Condominium Project Repairs Account (or the absence thereof) shall not affect the enforceability or effectiveness of the balance of this Amendment, which shall be applicable in accordance with its terms.

Condominium Sublessee further acknowledges and agrees that, the existence, funding or use of the Condominium Project Repairs Account is not in replacement, limitation or waiver of Condominium Sublessee's obligation to fund its share of Operating Expenses under the Master Condominium Sublease, and, except as funds disbursed from the Condominium Project Repairs Account are credited to the Monthly Maintenance Fees or Supplemental Maintenance Fees otherwise payable by Condominium Sublessee, Condominium Sublessee shall remain responsible for payment of its share (based on its Operating Expense Percentage) of such Monthly Maintenance Fees and Supplemental Maintenance Fees in accordance with the terms of the Subject Condominium Sublease, whether relating to matters shown on the list of Covered Repairs or other repair, renovation or replacement work at the Property.

11. Miscellaneous.

11.1 Counterparts. This Amendment may be executed in several counterparts, each of which shall be deemed an original, and such counterparts shall constitute but one and the same instrument.

11.2 Governing Law. This Amendment shall be governed by and construed in accordance with the laws of the State of California without giving effect to the conflict of law principles of said state.

11.3 Controlling Provisions. In the event of any inconsistencies between the provisions of this Amendment, on the one hand, and the provisions of the Subject Condominium Sublease or the Subject Subleasehold Deed of Trust, on the other, the provisions of this Amendment shall govern and prevail.

11.4 Integration and Merger. This Amendment and the Exhibit attached hereto contain the entire agreement of Sublessor and Condominium Sublessee regarding the modification of the Subject Condominium Sublease and the Subject Subleasehold Deed of Trust and supersedes all prior agreements, term sheets and understandings between Sublessor and Condominium Sublessee, whether written or oral, with respect to the modification of the Subject Condominium Sublease and the Subject Subleasehold Deed of Trust.

11.5 Continued Effectiveness. Neither the Subject Condominium Sublease nor the Subject Subleasehold Deed of Trust has been modified, amended or supplemented except as set forth in this Amendment and, as amended by this Amendment, each of the Subject

Condominium Sublease and the Subject Subleasehold Deed of Trust is and remains in full force and effect.

11.6 No Third Party Beneficiary Status. Notwithstanding anything which is or appears to be to the contrary, Condominium Sublessee acknowledges that it is not a third party beneficiary of the Master Lease Amendment and shall not have any rights with respect thereto.

IN WITNESS WHEREOF, Sublessor and Condominium Sublessee have executed this Amendment as of the date first above written.

SUBLESSOR:

ESSEX MARINA CITY CLUB, L.P.,  
a California limited partnership

By: Essex MCC, LLC,  
a Delaware limited liability company,  
its general partner

By: Essex Portfolio, L.P.,  
a California limited partnership,  
its sole member

By: Essex Property Trust, Inc.,  
a Maryland corporation,  
its general partner

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

CONDOMINIUM SUBLESSEE:

\_\_\_\_\_  
Name

\_\_\_\_\_  
Name

[NOTARY BLOCKS TO BE ADDED TO EXECUTION COPY]

## CONSENT AND AGREEMENT OF JUNIOR LENDER

The undersigned, which is the current holder of the beneficiary's interest under the deed of trust that encumbers the Subject Condominium Sublease and was recorded in the Official Records on \_\_\_\_\_ as Instrument No. \_\_\_\_\_ (the "Mortgage"), hereby declares as follows:

1. The undersigned consents to the Amendment to Condominium Sublease and Condominium Subleasehold Deed of Trust and Assignment of Rents (the "Amendment") to which this Consent and Agreement of Lender is attached. Without limiting the foregoing, the undersigned agrees that the Mortgage is subject to the terms of the Amendment.

2. The undersigned agrees that the Condominium Subleasehold Deed of Trust and Assignment of Rents that encumbers the Subject Condominium Sublease and was recorded in the Official Records on \_\_\_\_\_ as Instrument No. \_\_\_\_\_ (the "Original Sublessor Deed of Trust"), as amended by the Amendment (as amended, the "Sublessor Deed of Trust"), shall unconditionally be and remain at all times a lien or charge on the Subject Condominium Sublease prior and superior to the lien or charge of the Mortgage, and that such Sublessor Deed of Trust secures all Accrued Monetary Obligations thereunder, including, without limitation, the increased Change in Ownership Fee and the 2023 Special Payment (each as set forth in the Amendment). Without limiting the foregoing, the undersigned hereby subordinates the lien or charge of the Mortgage to the lien or charge of the Sublessor Deed of Trust.

3. The undersigned acknowledges that Sublessor would not enter into the Amendment and that County would not enter into the Master Lease Amendment without the undersigned's execution of this Consent and Agreement of Lender.

Date: \_\_\_\_\_, 2004

[NAME OF MORTGAGEE]

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

[NOTARY BLOCKS TO BE ADDED TO EXECUTION COPY]

Exhibit K to Exhibit C  
Schedule of 2003 Shadow Rent

[To be attached]

SHADOW RENT CALCULATION WORKSHEET - PARCEL 125R (IMPROVED PARCEL)

A	B	C	D	E	F	G	H	I	J	K	L	M
DATE	BEGINNING UNCAPPED SHADOW RENT	BEGINNING ACTUAL SHADOW RENT	CP-U RENTAL INDEX PRIOR NOVEMBER LAST YEAR	CP-U RENTAL INDEX THIS NOVEMBER THIS YEAR	CP-U RENTAL INDEX PERCENTAGE CHANGE	REAL ESTATE RESEARCH COUNCIL INDEX OCTOBER LAST YEAR	REAL ESTATE RESEARCH COUNCIL INDEX OCTOBER THIS YEAR	REAL ESTATE RESEARCH COUNCIL INDEX PERCENTAGE CHANGE	AVERAGE INCREASE OR DECREASE OF TWO INDEXES	NEW UNCAPPED SHADOW RENT AS OF NEXT JANUARY 1	MAXIMUM ALLOWABLE SHADOW RENT AS OF NEXT JANUARY 1	ACTUAL SHADOW RENT AS OF NEXT JANUARY 1
JANUARY 1, 1987	\$1,150,651.65	\$1,150,651.65	127.60	133.00	4.23197%	48.90	60.20	23.10838%	13.670180%	\$1,307,947.80	\$1,242,703.78	\$1,242,703.78
JANUARY 1, 1988	\$1,307,947.80	\$1,242,703.78	133.00	140.20	5.41353%	60.20	77.40	28.57143%	16.992481%	\$1,530,200.58	\$1,342,120.08	\$1,342,120.08
JANUARY 1, 1989	\$1,530,200.58	\$1,342,120.08	140.20	145.80	3.99429%	77.40	95.90	23.90181%	13.948051%	\$1,743,633.74	\$1,449,489.69	\$1,449,489.69
JANUARY 1, 1990	\$1,743,633.74	\$1,449,489.69	145.80	152.60	4.66392%	95.90	97.10	1.25130%	2.957613%	\$1,795,203.69	\$1,565,448.87	\$1,565,448.87
JANUARY 1, 1991	\$1,795,203.69	\$1,565,448.87	152.60	155.40	1.83486%	97.10	88.70	-8.65088%	-3.408007%	\$1,734,023.03	\$1,690,684.78	\$1,690,684.78
JANUARY 1, 1992	\$1,734,023.03	\$1,690,684.78	155.40	156.70	0.83655%	88.70	84.40	-4.84780%	-2.008623%	\$1,699,245.02	\$1,699,245.02	\$1,699,245.02
JANUARY 1, 1993	\$1,699,245.02	\$1,699,245.02	156.70	155.90	-0.31908%	84.40	72.80	-13.74408%	-7.031578%	\$1,579,761.28	\$1,506,634.16	\$1,506,634.16
JANUARY 1, 1994	\$1,579,761.28	\$1,579,761.28	155.90	155.60	-0.19263%	72.80	66.20	-9.06593%	-4.628998%	\$1,484,701.61	\$1,484,701.61	\$1,484,701.61
JANUARY 1, 1995	\$1,506,634.16	\$1,506,634.16	155.60	158.10	1.60668%	66.20	65.60	-1.455732%	-1.735019%	\$1,510,461.46	\$1,603,477.73	\$1,603,477.73
JANUARY 1, 1996	\$1,484,701.61	\$1,484,701.61	158.10	160.90	1.77103%	65.60	73.90	12.65244%	7.211735%	\$1,619,391.94	\$1,748,943.29	\$1,748,943.29
JANUARY 1, 1997	\$1,510,461.46	\$1,510,461.46	160.90	166.10	3.23182%	73.90	85.10	15.15562%	9.51921%	\$1,768,274.27	\$1,885,858.76	\$1,885,858.76
JANUARY 1, 1998	\$1,619,391.94	\$1,619,391.94	166.10	172.40	3.79290%	85.10	93.20	9.51921%	6.655555%	\$1,885,858.76	\$2,036,839.75	\$2,036,839.75
JANUARY 1, 1999	\$1,748,943.29	\$1,748,943.29	172.40	179.80	4.29234%	93.20	99.80	7.08156%	6.686944%	\$1,993,216.38	\$2,152,673.69	\$2,152,673.69
JANUARY 1, 2000	\$1,885,858.76	\$1,885,858.76	179.80	191.00	6.22914%	99.80	109.00	9.21844%	7.723790%	\$2,147,168.23	\$2,313,695.21	\$2,313,695.21
JANUARY 1, 2001	\$1,993,216.38	\$1,993,216.38	191.00	200.30	4.86911%	109.00	120.60	10.64220%	7.755656%	\$2,313,695.21	\$2,313,695.21	\$2,313,695.21
JANUARY 1, 2002	\$2,147,168.23	\$2,147,168.23	200.30									
JANUARY 1, 2003	\$2,313,695.21	\$2,313,695.21										

COLUMN EXPLANATIONS

- A - EFFECTIVE DATE OF SHADOW RENT ADJUSTMENT IS JANUARY 1 OF EACH YEAR  
B - UNCAPPED SHADOW RENT AS OF THE BEGINNING OF THE YEAR. FOR EXAMPLE, JANUARY 1, 1988 = \$1,307,947.80. THE UNCAPPED SHADOW RENT REPRESENTS THE COMPOUNDED INCREASES OF THE TWO INDEXES BEFORE APPLICATION OF THE 8% CAP ON ANNUAL INCREASES. THE NUMBER IN COLUMN B EQUALS THE NUMBER IN COLUMN K FOR THE PRIOR YEAR.  
C - BEGINNING ACTUAL SHADOW RENT IS THE SHADOW RENT AMOUNT FOR THE YEAR. FOR EXAMPLE, JANUARY 1, 1988 = \$1,242,703.78. THE ACTUAL SHADOW RENT REPRESENTS THE LESSER OF COLUMN K OR COLUMN L FOR THE PRIOR YEAR.  
D - CP-U RENTAL INDEX FOR THE PRIOR YEAR.  
E - CP-U RENTAL INDEX FOR THE NOVEMBER PRIOR TO THE DATE IN COLUMN A. FOR EXAMPLE, 127.60 REPRESENTS CP-U RENTAL INDEX IN NOVEMBER 1986. CP-U BEING USED IS 1982.84 = 100. THE NUMBER IN COLUMN D EQUALS THE NUMBER IN COLUMN E FOR THE PRIOR YEAR.  
F - PERCENTAGE CHANGE OF CP-U RENTAL FOLLOWING THE DATE IN COLUMN A. FOR EXAMPLE, 133.00 ON JANUARY 1, 1987 LINE REPRESENTS RERC INDEX IN OCTOBER, 1987.  
G - REAL ESTATE RESEARCH COUNCIL WESTSIDE-SANTA MONICA AVERAGE HOUSING VALUE INDEX (RERC INDEX) FOR THE OCTOBER PRIOR TO DATE IN COLUMN A. FOR EXAMPLE, 48.90 ON JANUARY 1, 1987 LINE REPRESENTS RERC INDEX IN OCTOBER, 1987.  
H - RERC INDEX FOR THE OCTOBER FOLLOWING THE DATE IN COLUMN A. FOR EXAMPLE, 60.20 ON JANUARY 1, 1988 LINE REPRESENTS RERC INDEX IN OCTOBER, 1987.  
I - PERCENTAGE CHANGE OF RERC INDEX FOR THE 12 MONTHS BETWEEN COLUMN G AND COLUMN H.  
J - FULL SHADOW RENT EFFECTIVE THE FOLLOWING YEAR WITHOUT APPLICATION OF THE 8% CAP. COMPUTED BY MULTIPLYING COLUMN J BY COLUMN B AND ADDING COLUMN B. FOR EXAMPLE, THE JANUARY 1, 1987 COLUMN B (\$1,150,651.65) MULTIPLIED BY JANUARY 1, 1987 COLUMN J (0.3670180%) ADDED TO COLUMN B EQUALS JANUARY 1, 1987 COLUMN K (\$1,307,947.80) AS WELL AS JANUARY 1, 1988 COLUMN B.  
L - MAXIMUM ALLOWABLE SHADOW RENT AS OF JANUARY 1 OF THE FOLLOWING YEAR BASED ON 8% CAP. CALCULATED BY MULTIPLYING BEGINNING ACTUAL SHADOW RENT BY 108% (8% INCREASE). FOR EXAMPLE, THE JANUARY 1, 1987 COLUMN B (\$1,150,651.65) MULTIPLIED BY 108% EQUALS \$1,242,703.78.  
M - SHADOW RENT WHICH WILL BE IN EFFECT ON THE NEXT JANUARY 1. IS THE LESSER OF COLUMNS K OR L AND EQUALS THE NUMBER IN COLUMN C FOR THE FOLLOWING YEAR.

Exhibit L to Exhibit C

Changes in Ownership After June 30, 2004

[To Be Attached Immediately Prior to the Effective Date]

EXHIBIT U-1

Category A Units

[To Be Attached Immediately Prior to the Effective Date]

EXHIBIT U-2

Category B Units

[To Be Attached Immediately Prior to the Effective Date]

## EXHIBIT V

### Provisions Regarding Shadow Rent

#### I. Indices to Determine Increases in Shadow Rent: 1988 - 2003

As provided in subsection 5.08.B(2)(b) of the Lease, the Shadow Rent for each Apartment Approved for Prepaid Subleases shall be adjusted during the period set forth therein (for Category A Units, each January 1 beginning in 1988 and ending in 2003; for Category B Units, each January 1 beginning in 1988 and continuing for the remainder of the term) based upon the average percentage change in two indices, as follows:

(a) The first index is the Residential Rental Component of the Consumer Price Index for All Urban Consumers (base year 1967) for the Los Angeles-Long Beach Area, published by the United States Department of Labor, Bureau of Labor Statistics (the "CPI Rental Index"). The second index is the Index of average housing value of the Real Estate Research Council of Southern California for the Westside-Santa Monica reporting area (the "Research Council Index").

(b) In order to determine the percentage change in an Index, the figure shown on the Index published for a date on or most recently before January 1, 1987 ("Beginning Index") shall be subtracted from the figure shown on the Index published for a date on or most recently before the date rent is to be adjusted ("Adjustment Index"), assuming the indices are published not more than twelve (12) months apart. The difference shall be divided by the figure shown on the Beginning Index, and that result shall be the percentage change in the particular Index for the preceding year. In order that the percentage change may be measured annually, the Adjustment Index in one (1) year shall become the Beginning Index for the following year.

(c) The percentage change for each Index, as calculated above, shall be added together, and the sum divided by two (2). The result shall constitute the average percentage change in the two (2) indices.

(d) Subject to the limitations in clause (e) below, the average percentage change calculated in the preceding subsection shall be multiplied by the Shadow Rent in effect immediately preceding the Adjustment Date, and the resultant figure shall be added to or subtracted from such Shadow Rent, with the total being the Shadow Rent for the following year. In no event, however, shall the Shadow Rent for an particular Prepaid Subleased apartment in any year either be less than the Initial Shadow Rent for that apartment nor shall it exceed an amount equal to the Initial Shadow Rent for that apartment, increased at eight percent (8%) per year, on a compounded basis. The maximum Shadow Rent payable with respect to a Prepaid Subleased Apartment expressed in terms of a percentage of the Initial Shadow Rent (shown on Exhibit R to the Lease) is set forth in Exhibit F to the Lease and incorporated herein. The maximum rent payable, with respect to such an Apartment, would be the Initial Shadow Rent, first multiplied by the percentage shown on Exhibit F, and then multiplied by the appropriate percentage under subsection 5.08.B(1) of the Lease.

(e) The Shadow Rent for any particular apartment in any one (1) year, however, shall not increase by more than the lesser of the following: an amount equal to eight percent (8%) of the Shadow Rent in effect immediately preceding the Adjustment Date; or, an amount equal to the maximum percentage increase permitted by any applicable rent control ordinance or law.

(f) In the event that the limitation in clause (e) above becomes effective, such that County did not receive the full increase otherwise allowable under clause (d) above, County shall be entitled to carry forward the dollar amount of increase it was otherwise entitled to, appropriately compounded, to years where such limitation does not otherwise come into effect. This entitlement shall exist until such time as the Shadow Rent for the particular apartment reaches the annual dollar amount it would have attained in the absence of clause (e) above. Increases attributable to the carry forward itself, however, shall also be subject to the limits of clause (e) above. This carry forward provision shall operate as shown in the following example:

EXAMPLE: Assume Initial Shadow Rent of \$1,000 per month, and average percentage index changes in Years 1, 2 and 3 of 7%, 10% and 4%, respectively.

- The increase in Year 1 would be \$70 [ $\$1,000 + (\$1,000 \times 7\%)$ ], thereby increasing the rent for Year 2 to \$1,070.
- The increase in Year 2 would be \$85.60, thereby increasing the rent for Year 3 to \$1,155.60 [ $\$1,070 + (8\% \times \$1,070)$ ].
- The increase in Year 3 would be \$68.40, thereby increasing the rent for Year 4 to \$1,224 [ $\$1,177$  (the rent which would have been in effect but for the maximum increase limits) +  $(4\% \times \$1,177)$ ].

NOTE:  $\$1,177 + \$47 = \$1,224$   
 $\$1,224 - \$1,155.60 = \$68.40$   
\$68.40 is less than 8% of \$1,155.60 (\$92.40)

(g) If either Index is changed so that its base year differs from that used as of January 1, 1987, the Index shall be converted in accordance with the conversion factor published by the publisher of the Index. If the Research Council Index is discontinued, then adjustments occurring after the discontinuance of the Research Council Index shall be based solely upon the percentage change in the CPI Rental Index. If the CPI Rental Index is discontinued or revised during the term, such other government index or computation with which it is replaced shall be used in order to obtain substantially the same result as would be obtained if the CPI Rental Index had not been discontinued or revised. In the event County and Lessee fail to agree on the use of a replacement index within sixty (60) days of such discontinuance or revision, the selection of the same shall be determined by arbitration in accordance with Section 16.16 of the Lease.

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\* In the absence of the maximum increase limitations, the rent would have increased to \$1,177. But clauses (d) and (e) above limit the increase to 8% of the preceding year's Shadow Rent.

## II. Rent Adjustment Analysis in 2019

This Section II contains the terms and components of the "Rent Adjustment Analysis" described in subsection 5.08.B(3) of the Lease.

### A. Background and Underlying Assumptions

This Exhibit V is being added to the Lease pursuant to that certain Amendment No. 4 to the Second Amended and Restated Lease (Improved Parcel) 55624, Parcel No. 125R – Marina del Rey Small Craft Harbor (the "Amendment"). The terms of the Amendment include amending the Lease to, among other things:

- (i) freeze the Shadow Rent attributable to Category A Units at the amount for 2003 through December 31, 2006;
- (ii) provide that commencing on January 1, 2007, the Shadow Rent attributable to Category A Units shall be increased annually at a fixed rate (3.75%) rather than by the change in the two indices described in Section I above (prior to this Amendment, the Lease provided that the Shadow Rent would be adjusted annually throughout the term based on the change in such indices);
- (iii) provide that a portion of the Percentage Rents for Prepaid Subleases received by County from 1999 through 2006 will be disbursed to Lessee to reimburse it for a portion of the costs of certain repairs to portions of the Premises, including the portion improved with the Condominium Project;
- (iv) postpone the adjustment to the "applicable percentage" component of the formula for determining the Percentage Rents for Prepaid Subleases with respect to Category A Units from January 1, 2016 to January 1, 2019; and
- (v) increase the Administrative Transfer Fee payable to County upon a Change in Ownership of a Prepaid Sublessee's interest with respect to a Category A Unit (from 1% of the gross sales price or other consideration to 2.5% of such amount).

County will suffer two types of rent losses with respect to the Percentage Rents for those Prepaid Subleases that are Category A Units on account of the amendments described in clauses (i) and (ii) of the previous paragraph, as illustrated in the spreadsheet attached hereto as Schedule 1A (the "Financial Model"):

- (a) a reduction in such Percentage Rents during the years 2004, 2005 and 2006 on account of the Shadow Rent freeze described in clause (i); and
- (b) a reduction in such Percentage Rents over the remainder of the term as a result of the "lower base amount" or "starting point" for the annual Shadow Rent increase described in clause (ii) (i.e., as a result of the Shadow Rent freeze described in clause (i), the base amount for the annual

Shadow Rent increase that is to commence in 2007 will be the Shadow Rent amount for 2003 and each year County will lose the benefit of the assumed Shadow Rent increases, as shown in Column 1 of the Financial Model, for the years 2004, 2005 and 2006.

The present value of the rent losses described in clauses (a) and (b) above through December 31, 2052 (in 2003 dollars, using a discount rate of 8%), as shown in Column 5 of the Financial Model, is referred to herein as the "Percentage Rent Shortfall". The Financial Model (Schedules 1A and 1B) projects that the Percentage Rent Shortfall will equal the amount shown in the box immediately below Column 5 thereof.

The terms described in clauses (i) through (iii) of the previous paragraph are being agreed to on the basis, and with the understanding, that the sum of (x) the present value (in 2003 dollars, using a discount rate of 8%) of the amount received by County for the period commencing on the earlier of June 30, 2004 or the effective date of the Amendment and ending on December 31, 2052 on account of the increase in the Administrative Transfer Fee for Category A Units (i.e., 60% of the Administrative Transfer Fees received for such period with respect to Category A Units; the portion of the total Administrative Transfer Fees attributable to such increase is hereinafter referred to as the "Increased Administrative Transfer Fees") after repayment of the Disbursed Repair Funds Balance (see Exhibit W) (the "Net Administrative Transfer Fee Increase"), and (y) the agreed upon value of the easement described in paragraph 8 of Exhibit B to the Amendment, which County and Lessee hereby stipulate and agree is \$350,000 (the "Easement Value"), will not be less than the Percentage Rent Shortfall for the same period by more than \$500,000. The parties have projected, as provided and based on the assumptions reflected in the Financial Model (and set forth in Schedule 1B), that the sum of the Net Administrative Transfer Fee Increase (i.e., the total of the values shown in Column 15 of the Financial Model) and the Easement Value (\$350,000) will exceed the Percentage Rent Shortfall (i.e., the total of the values shown in Column 5 of the Financial Model).

B. Purpose and Intent

The purpose and intent of the Rent Adjustment Analysis is to determine whether in 2019, based on certain actual occurrences from 2004 through 2018 (i.e., the number, frequency of and sales prices or other consideration paid for Changes in Ownership), it is still anticipated that the Net Administrative Transfer Fee Increase plus the Easement Value will not be less than the Percentage Rent Shortfall by more than \$500,000. If the Rent Adjustment Analysis reveals that the Percentage Rent Shortfall exceeds the sum of the Net Administrative Transfer Fee Increase and the Easement Value by more than \$500,000, then the fixed annual rate of increase in Shadow Rent (the "Shadow Rent Annual Percentage Increase") shall be increased to the amount that, based on the formulas set forth in the Financial Model but substituting certain observed values (i.e., those in Columns 9, 10 and 11 of the Financial Model) from 2004 through 2018 for the corresponding assumptions originally made therein, will result in the Net Administrative Transfer Fee Increase plus the Easement Value being less than the Percentage Rent Shortfall by no more than \$500,000.

C. Calculations

The Rent Adjustment Analysis shall consist of the following calculations and steps.

1. *Step 1: Determination of Whether There is a Rent Deficiency*

Not later than February 1, 2019, using the approach set forth in the Financial Model, County shall determine whether a Rent Deficiency exists by the following method:

(a) substitute the actual volume and prices of Category A Unit sales, for the period from July 1, 2004 through December 31, 2018 for the projected values now included in Columns 9 and 10 of the Financial Model;

(b) project the Increased Administrative Transfer Fees (Column 13) for the Category A Units for the period from January 1, 2019 through December 31, 2052, using the sales trend established for the period from July 1, 2004 through December 31, 2018, as determined through the application of appropriate statistical techniques; and

(c) using the new projection of Increased Administrative Transfer Fees (Column 13) for the Category A Units but leaving all other variables alone, recalculate the Net Administrative Transfer Fee Increase.

If the sum of the Net Administrative Transfer Fee Increase and the Easement Value is more than \$500,000 lower than the Percentage Rent Shortfall, then a "Rent Deficiency" shall exist and the Shadow Rent Annual Percentage Increase shall be increased as provided in Step 2 below (as discussed in Section III.C.3 below, examples of a hypothetical Rent Deficiency and the resulting Shadow Rent Annual Percentage Increase are attached as Schedules 2A and 3A hereto); if there is no Rent Deficiency, then the Shadow Rent Annual Percentage Increase shall remain unchanged for the remainder of the term, except for any increase to be implemented pursuant to Section III of this Exhibit V.

2. *Step 2: Recalibration of the Ground Rent Index*

If there is a Rent Deficiency, then the Financial Model shall be revised with a higher rate for the Shadow Rent Annual Percentage Increase from 2019 through 2052 until the total of (i) the Net Administrative Transfer Fee Increase, (ii) the Percentage Rent Shortfall (i.e., the ending value in Column 16 of the Financial Model) plus (iii) the Easement Value yields a shortfall of \$500,000, plus or minus \$10,000. The percentage rate so derived shall then become the Shadow Rent Annual Percentage Increase effective as of January 1, 2019 and remain so for the remainder of the lease term, except for any additional increase to be implemented pursuant to Section III of this Exhibit V.

3. *Example of Calculations in 2019*

As provided above, the Financial Model (Schedule 1A) reflects certain assumptions (as set forth in Schedule 1B) made by the parties with respect to the volume and

prices of sales of the Category A Units (and the resulting Administrative Transfer Fees and Increased Administrative Transfer Fees) for the period from July 1, 2004 through December 31, 2018. Schedule 2A hereto contains an alternate version of the Financial Model that utilizes different amounts for certain columns (i.e., different than the corresponding amounts in Schedule 1A) based on certain hypothetical sales of the Category A Units during such period (as set forth in the assumptions contained in Schedule 2B), resulting in a projected Rent Deficiency of \$2,040,970 (the sum of (i) the ending value in Column 16 of Schedule 2A and (ii) the Easement Value (\$350,000)). If the hypothetical sales reflected in Schedules 2A and 2B actually occur, then, in April 2019, the Shadow Rent Annual Percentage Increase will be increased from 3.75% to 4.21% so that, as reflected in Schedule 3A, there will be no projected Rent Deficiency in 2052 (because the sum of (i) the ending value in Column 16 of Schedule 3A and (ii) the Easement Value (\$350,000) will not result in a shortfall greater than \$500,000).

### III. Additional Potential Rent Adjustment in 2019

Regardless of whether the Shadow Rent Annual Percentage Increase is to be increased as a result of the Rent Adjustment Analysis, if it is determined, pursuant to and at the time provided in Section 5.10 of the Lease, that the applicable percentage component of the formula for determining the Percentage Rent for those Prepaid Subleases that are Category A Units should be increased, then the following changes shall be made to the formula for determining the Percentage Rent for those Prepaid Subleases that are Category A Units effective as of January 1, 2019 (with the first payment of increased Percentage Rent attributable to such changes due in April 2019, as provided in subsection 5.08(b)(4) of the Lease):<sup>1</sup> (i) the applicable percentage shall be increased to the percentage previously determined pursuant to Section 5.10; and (ii) the Shadow Rent Annual Percentage Increase shall be increased (in addition to any increase to be made as a result of the Rent Adjustment Analysis) by the amount that will enable County to recover, over the remainder of the term, the amount of the increase in Percentage Rents for Category A Units that County otherwise would have received from 2016 through March 2019, resulting from the increase in the applicable percentage component of the Percentage Rent formula, together with interest thereon at a rate equal to the County Pool Rate (as defined in Exhibit W) (collectively, the "Deferred Percentage Rent Amount").

Schedules 4A and 4B illustrate the impact of the additional rent owed as a result of the delay in the increase (from 2016 until April 2019) in the applicable percentage component of the formula for determining the Percentage Rent for those Prepaid Subleases that are Category A Units. In the example shown on Schedule 4B, the Deferred Percentage Rent Amount is \$2,844,354; this amount must be considered together with any Rent Deficiency for purposes of determining the Shadow Rent Annual Percentage Increase to be implemented in April 2019 so

<sup>1</sup> The (original) Lease provides that the adjustment to the Percentage Rent for Prepaid Subleases under Section 5.10 is to occur as of January 1, 2016. The determination of whether an adjustment should be made pursuant to that Section will be made at the time provided therein for all Prepaid Subleases, and any applicable adjustment shall continue to be effective as of January 1, 2016 with respect to those Prepaid Subleases that are Category B Units; however, any applicable adjustment with respect to those Prepaid Subleases that are Category A Units shall be delayed until 2019 so that the various rental adjustments for the Category A Units may be combined as part of a single rental increase (in terms of any changes to the formula for determining the Percentage Rent).

that the total of (i) the Net Administrative Transfer Fee Increase, the Percentage Rent Shortfall plus the Easement Value, minus (ii) the Deferred Percentage Rent Amount is projected to yield a shortfall of \$500,000, plus or minus \$10,000. In the example shown on Schedule 4B, the new Shadow Rent Annual Percentage Increase would be 4.96%.

IV. Schedules

Schedules 1A, 1B, 2A, 2B, 3A, 3B, 4A and 4B to this Exhibit V are hereby incorporated into and form a part of this Exhibit V as if set forth herein in full.

Schedule 1A to Exhibit V

Spreadsheet Depicting Formula for Rent Adjustment Analysis

See the attached

[The attached Spreadsheet assumes that there are 480 Category A Units; as provided in Exhibit B, if there are fewer than 480 Category A Units, then the Amendment to which this Exhibit V is attached will not be effective. Prior to the Effective Date (if that occurs), the attached Spreadsheet will be replaced with a revised Spreadsheet that reflects the actual number of Category A Units.]

Schedule 1A  
Marina City Club: Base Case

Year	Percentage Shadow Rent Increasing at 3.75% Starting in 2003	Percentage Shadow Rent Present Value at 8.00% Discount Rate	Percentage Shadow Rent Frozen in 2003 - 3.75% Fixed Annual Increase	Percentage Rent Loss [Col (3) - Col (4)]	Percentage Rent Loss [PV of Col (4) at 8% Discount Rate]	Base Percentage Rent for Contribution to Gross Condo Project Repairs	Annual Contribution to Gross Condo Project Repairs	Assumed Category A Units Sold at Marina City Club Towers	Assumed Selling Price Per Category A Unit	Total Dollar Volume of Category A Sales [Col (9) x Col (10)]	Total Administrative Fees [Col (11) x 2.5%]	Administrative Transfer Fee [Col (12) - Col (11) x 1.0%]	Net Condo Project Repairs with Interest at 4.00% after 2003 [Prior Yr. - Col (13) + Col (17) + Interest]	PV of Increased Fees After Net Condo Project Repairs	Cumul. PV of Percentage Rent Loss + Incr. Admin Transfer Fee [PV of Col (15)]
1998	1,943,270	1,943,270	1,943,270	0	0	1,943,270	155,462	0	0	0	0	0	155,462	0	0
1999	2,068,732	2,068,732	2,068,732	0	0	1,943,270	319,885	0	0	0	0	0	319,885	0	0
2000	2,263,155	2,263,155	2,263,155	0	0	1,943,270	448,569	0	0	0	0	0	448,569	0	0
2001	2,391,860	2,391,860	2,391,860	0	0	1,943,270	633,332	0	0	0	0	0	633,332	0	0
2002	2,578,602	2,578,602	2,578,602	0	0	1,943,270	833,164	0	0	0	0	0	833,164	0	0
2003	2,776,434	2,776,434	2,776,434	0	0	1,943,270	1,083,958	0	0	0	0	0	1,083,958	0	0
2004	2,980,551	2,980,551	2,980,551	0	0	1,943,270	1,395,923	0	0	0	0	0	1,395,923	0	0
2005	3,198,643	3,198,643	3,198,643	0	0	1,943,270	1,783,164	0	0	0	0	0	1,783,164	0	0
2006	3,437,917	3,437,917	3,437,917	0	0	1,943,270	2,253,593	0	0	0	0	0	2,253,593	0	0
2007	3,712,551	3,712,551	3,712,551	0	0	1,943,270	2,825,223	0	0	0	0	0	2,825,223	0	0
2008	4,024,709	4,024,709	4,024,709	0	0	1,943,270	3,519,163	0	0	0	0	0	3,519,163	0	0
2009	4,377,282	4,377,282	4,377,282	0	0	1,943,270	4,458,569	0	0	0	0	0	4,458,569	0	0
2010	4,782,908	4,782,908	4,782,908	0	0	1,943,270	5,783,517	0	0	0	0	0	5,783,517	0	0
2011	5,254,561	5,254,561	5,254,561	0	0	1,943,270	7,645,223	0	0	0	0	0	7,645,223	0	0
2012	5,800,082	5,800,082	5,800,082	0	0	1,943,270	10,255,223	0	0	0	0	0	10,255,223	0	0
2013	6,437,617	6,437,617	6,437,617	0	0	1,943,270	13,885,223	0	0	0	0	0	13,885,223	0	0
2014	7,182,551	7,182,551	7,182,551	0	0	1,943,270	18,925,223	0	0	0	0	0	18,925,223	0	0
2015	8,057,617	8,057,617	8,057,617	0	0	1,943,270	25,825,223	0	0	0	0	0	25,825,223	0	0
2016	9,082,551	9,082,551	9,082,551	0	0	1,943,270	35,525,223	0	0	0	0	0	35,525,223	0	0
2017	10,382,551	10,382,551	10,382,551	0	0	1,943,270	49,025,223	0	0	0	0	0	49,025,223	0	0
2018	11,982,551	11,982,551	11,982,551	0	0	1,943,270	66,525,223	0	0	0	0	0	66,525,223	0	0
2019	13,932,551	13,932,551	13,932,551	0	0	1,943,270	91,025,223	0	0	0	0	0	91,025,223	0	0
2020	16,382,551	16,382,551	16,382,551	0	0	1,943,270	124,525,223	0	0	0	0	0	124,525,223	0	0
2021	19,482,551	19,482,551	19,482,551	0	0	1,943,270	173,525,223	0	0	0	0	0	173,525,223	0	0
2022	23,382,551	23,382,551	23,382,551	0	0	1,943,270	244,525,223	0	0	0	0	0	244,525,223	0	0
2023	28,382,551	28,382,551	28,382,551	0	0	1,943,270	344,525,223	0	0	0	0	0	344,525,223	0	0
2024	34,882,551	34,882,551	34,882,551	0	0	1,943,270	484,525,223	0	0	0	0	0	484,525,223	0	0
2025	43,382,551	43,382,551	43,382,551	0	0	1,943,270	674,525,223	0	0	0	0	0	674,525,223	0	0
2026	54,382,551	54,382,551	54,382,551	0	0	1,943,270	944,525,223	0	0	0	0	0	944,525,223	0	0
2027	68,382,551	68,382,551	68,382,551	0	0	1,943,270	1,314,525,223	0	0	0	0	0	1,314,525,223	0	0
2028	86,382,551	86,382,551	86,382,551	0	0	1,943,270	1,844,525,223	0	0	0	0	0	1,844,525,223	0	0
2029	109,382,551	109,382,551	109,382,551	0	0	1,943,270	2,574,525,223	0	0	0	0	0	2,574,525,223	0	0
2030	139,382,551	139,382,551	139,382,551	0	0	1,943,270	3,644,525,223	0	0	0	0	0	3,644,525,223	0	0
2031	179,382,551	179,382,551	179,382,551	0	0	1,943,270	5,214,525,223	0	0	0	0	0	5,214,525,223	0	0
2032	234,382,551	234,382,551	234,382,551	0	0	1,943,270	7,414,525,223	0	0	0	0	0	7,414,525,223	0	0
2033	304,382,551	304,382,551	304,382,551	0	0	1,943,270	10,414,525,223	0	0	0	0	0	10,414,525,223	0	0
2034	394,382,551	394,382,551	394,382,551	0	0	1,943,270	14,414,525,223	0	0	0	0	0	14,414,525,223	0	0
2035	514,382,551	514,382,551	514,382,551	0	0	1,943,270	19,914,525,223	0	0	0	0	0	19,914,525,223	0	0
2036	674,382,551	674,382,551	674,382,551	0	0	1,943,270	27,914,525,223	0	0	0	0	0	27,914,525,223	0	0
2037	894,382,551	894,382,551	894,382,551	0	0	1,943,270	39,414,525,223	0	0	0	0	0	39,414,525,223	0	0
2038	1,194,382,551	1,194,382,551	1,194,382,551	0	0	1,943,270	55,414,525,223	0	0	0	0	0	55,414,525,223	0	0
2039	1,614,382,551	1,614,382,551	1,614,382,551	0	0	1,943,270	78,414,525,223	0	0	0	0	0	78,414,525,223	0	0
2040	2,194,382,551	2,194,382,551	2,194,382,551	0	0	1,943,270	109,414,525,223	0	0	0	0	0	109,414,525,223	0	0
2041	2,994,382,551	2,994,382,551	2,994,382,551	0	0	1,943,270	151,414,525,223	0	0	0	0	0	151,414,525,223	0	0
2042	4,094,382,551	4,094,382,551	4,094,382,551	0	0	1,943,270	209,414,525,223	0	0	0	0	0	209,414,525,223	0	0
2043	5,694,382,551	5,694,382,551	5,694,382,551	0	0	1,943,270	294,414,525,223	0	0	0	0	0	294,414,525,223	0	0
2044	7,894,382,551	7,894,382,551	7,894,382,551	0	0	1,943,270	409,414,525,223	0	0	0	0	0	409,414,525,223	0	0
2045	10,894,382,551	10,894,382,551	10,894,382,551	0	0	1,943,270	574,414,525,223	0	0	0	0	0	574,414,525,223	0	0
2046	14,894,382,551	14,894,382,551	14,894,382,551	0	0	1,943,270	804,414,525,223	0	0	0	0	0	804,414,525,223	0	0
2047	20,394,382,551	20,394,382,551	20,394,382,551	0	0	1,943,270	1,119,414,525,223	0	0	0	0	0	1,119,414,525,223	0	0
2048	27,894,382,551	27,894,382,551	27,894,382,551	0	0	1,943,270	1,594,414,525,223	0	0	0	0	0	1,594,414,525,223	0	0
2049	38,394,382,551	38,394,382,551	38,394,382,551	0	0	1,943,270	2,219,414,525,223	0	0	0	0	0	2,219,414,525,223	0	0
2050	52,894,382,551	52,894,382,551	52,894,382,551	0	0	1,943,270	3,094,414,525,223	0	0	0	0	0	3,094,414,525,223	0	0
2051	72,894,382,551	72,894,382,551	72,894,382,551	0	0	1,943,270	4,319,414,525,223	0	0	0	0	0	4,319,414,525,223	0	0
2052	101,894,382,551	101,894,382,551	101,894,382,551	0	0	1,943,270	6,019,414,525,223	0	0	0	0	0	6,019,414,525,223	0	0
2053	139,894,382,551	139,894,382,551	139,894,382,551	0	0	1,943,270	8,419,414,525,223	0	0	0	0	0	8,419,414,525,223	0	0
2054	194,894,382,551	194,894,382,551	194,894,382,551	0	0	1,943,270	11,819,414,525,223	0	0	0	0	0	11,819,414,525,223	0	0
2055	269,894,382,551	269,894,382,551	269,894,382,551	0	0	1,943,270	16,619,414,525,223	0	0	0	0	0	16,619,414,525,223	0	0
2056	379,894,382,551	379,894,382,551	379,894,382,551	0	0	1,943,270	23,419,414,525,223	0	0	0	0	0	23,419,414,525,223	0	0
2057	534,894,382,551	534,894,382,551	534,894,382,551	0	0	1,943,270	32,619,414,525,223	0	0	0	0	0	32,619,414,525,223	0	0
2058	749,894,382,551	749,894,382,551	749,894,382,551	0	0	1,943,270	45,619,414,525,223	0	0	0	0	0	45,619,414,525,223	0	0
2059	1,054,894,382,551	1,054,894,382,551	1,054,894,382,551	0	0	1,943,270	63,619,414,525,223	0	0	0	0	0	63,619,414,525,223	0	0
2060	1,479,894,382,551	1,479,894,382,551	1,479,894,382,551	0	0	1,943,270	89,619,414,525,223	0	0	0	0	0	89,619,414,525,223	0	0
2061	2,074,894,382,551	2,074,894,382,551	2,074,894,382,551	0	0	1,943,270	124,619,414,525,223	0	0	0	0	0	124,619,414,525,223	0	0
2062	2,879,894,382,551	2,879,894,382,551	2,879,894,382,551	0	0	1,943,270	174,619,414,525,223	0	0	0	0	0	174,619,414,525,223	0	0
2063	3,974,894,382,551	3,974,894,382,551	3,974,894,382,551	0	0	1,943,270	244,619,414,525,223	0	0	0	0	0	244,619,414,525,223	0	0
2064	5,529,894,382,551	5,529,894,382,551	5,529,894,382,551	0	0	1,943,270	344,619,414,525,223	0	0	0	0	0	344,619,414,525,223	0	0
2065	7,674,894,382,551	7,674,894,382,551	7,674,894,382,551	0	0	1,943,270	484,619,414,525,223	0	0	0	0	0	484,619,414,525,223	0	0
2066	10,629,894,382,551	10,629,894,382,551	10,629,894,382,551	0	0	1,943,270	674,619,414,525,223	0	0	0	0	0	674,619,414,525,223	0	0
2067	14,774,894,382,551	14,774,894,382,551	14,774,894,382,551	0	0	1,943,270	944,619,414,525,223	0	0	0	0	0	944,619,414,525,223	0	0
2068	20,479,894,382,551	20,479,894,382,551	20,479,894,382												

Schedule 1B to Exhibit V

Assumptions for Schedule 1A

See the attached

## Schedule 1B

## Marina City Club: Base Case Assumptions

**PARTICIPATION FEE ASSUMPTIONS**

1/1/2004	Assumed Date of Start of Deal
6/1/2004	Date at Which Interest Begins to Accrue (Assuming April 1 Deal)
8.00%	Base County Target Earnings Rate
0.00%	Differential for County Target Earnings Rate
8.00%	County Target Earnings Rate - Ground Rent
8.00%	County Target Earnings Rate - Participation
4.00%	Interest Rate on Loan
67.2	Assumed Number of Units Sold Per Year
\$325,000	Assumed Average Selling Price - 2003 Dollars
10.00%	Assumed One-Time Increase in 2004
6.00%	Increase in Selling Prices - 2005 through 2037
4.00%	Increase in Selling Prices - 2038 through 2052
21,840,000	Assumed Unit Sale Proceeds in 2002
1.00%	Current Participation Fee Paid to County
2.50%	Participation Fee to be Paid to County Starting in 2003, through 2019
2.50%	Participation Fee to be Paid to County Starting in 2020 on
\$350,000	Assumed Promenade Value
0.00%	Increase in Participation Fee in 2026
1	Sale decay trigger - 1 indicates decay of 2 per year after 2040
1	Sales for 1st half of 2004 - 1 indicates NO sales for first half of 2004

**PERCENTAGE INDEX ASSUMPTIONS**

7.72%	2002 Increase in MCC Ground Rent (Actual)
7.76%	2003 assumed ground rent increase
3.75%	2004 assumed ground rent increase
3.75%	2005 assumed ground rent increase
2019	Rent Deficiency Analysis Year
3.75%	Shadow Rent Annual Percentage Increase from 2003 to March 2019
3.75%	Adjusted Shadow Rent Annual Percentage Increase starting in April 2019

Schedule 2A to Exhibit V

Spreadsheet Depicting Hypothetical Results

See the attached

The calculations and values reflected in the attached spreadsheet are based on the assumptions set forth in Schedule 2B.

**Marina City Club Rent Adjustment Example: Before Rent Adjustment**

Example: Before Rent Adjustment

Year	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)	(14)	(15)	(16)
1998	1,943,270	1,943,270	1,943,270	1,943,270	1,943,270	1,943,270	155,462	155,462	0	0	1,783,600	294,840	176,904	0	0	(96,404)
1999	2,086,732	2,086,732	2,086,732	2,086,732	2,086,732	2,086,732	319,885	475,347	0	0	24,530,688	837,798	392,798	3,992,136	0	(278,277)
2000	2,263,156	2,263,156	2,263,156	2,263,156	2,263,156	2,263,156	448,969	923,536	0	0	25,511,916	937,767	397,960	3,992,136	0	(278,277)
2001	2,378,860	2,378,860	2,378,860	2,378,860	2,378,860	2,378,860	633,332	1,857,267	0	0	26,532,392	988,842	413,906	4,419,025	0	(535,644)
2002	2,576,802	2,576,802	2,576,802	2,576,802	2,576,802	2,576,802	933,332	2,390,431	0	0	28,697,435	1,174,336	430,462	4,419,025	0	(792,883)
2003	2,776,434	2,776,434	2,776,434	2,776,434	2,776,434	2,776,434	1,233,332	2,390,431	0	0	31,033,146	1,303,146	465,567	4,419,025	0	(1,248,557)
2004	2,968,571	2,968,571	2,968,571	2,968,571	2,968,571	2,968,571	1,533,332	2,390,431	0	0	33,571,948	1,484,211	507,765	4,419,025	0	(1,478,741)
2005	3,160,643	3,160,643	3,160,643	3,160,643	3,160,643	3,160,643	1,833,332	2,390,431	0	0	36,311,418	1,673,967	549,467	4,419,025	0	(1,705,300)
2006	3,352,781	3,352,781	3,352,781	3,352,781	3,352,781	3,352,781	2,133,332	2,390,431	0	0	39,274,422	1,873,967	591,967	4,419,025	0	(2,261,885)
2007	3,544,919	3,544,919	3,544,919	3,544,919	3,544,919	3,544,919	2,433,332	2,390,431	0	0	42,361,418	2,073,967	634,467	4,419,025	0	(2,440,871)
2008	3,737,057	3,737,057	3,737,057	3,737,057	3,737,057	3,737,057	2,733,332	2,390,431	0	0	45,448,418	2,273,967	676,967	4,419,025	0	(2,619,857)
2009	3,929,195	3,929,195	3,929,195	3,929,195	3,929,195	3,929,195	3,033,332	2,390,431	0	0	48,535,418	2,473,967	719,467	4,419,025	0	(2,798,843)
2010	4,121,333	4,121,333	4,121,333	4,121,333	4,121,333	4,121,333	3,333,332	2,390,431	0	0	51,622,418	2,673,967	761,967	4,419,025	0	(2,977,829)
2011	4,313,471	4,313,471	4,313,471	4,313,471	4,313,471	4,313,471	3,633,332	2,390,431	0	0	54,709,418	2,873,967	804,467	4,419,025	0	(3,156,815)
2012	4,505,609	4,505,609	4,505,609	4,505,609	4,505,609	4,505,609	3,933,332	2,390,431	0	0	57,796,418	3,073,967	846,967	4,419,025	0	(3,335,801)
2013	4,697,747	4,697,747	4,697,747	4,697,747	4,697,747	4,697,747	4,233,332	2,390,431	0	0	60,883,418	3,273,967	889,467	4,419,025	0	(3,514,787)
2014	4,889,885	4,889,885	4,889,885	4,889,885	4,889,885	4,889,885	4,533,332	2,390,431	0	0	63,970,418	3,473,967	931,967	4,419,025	0	(3,693,773)
2015	5,082,023	5,082,023	5,082,023	5,082,023	5,082,023	5,082,023	4,833,332	2,390,431	0	0	67,057,418	3,673,967	974,467	4,419,025	0	(3,872,759)
2016	5,274,161	5,274,161	5,274,161	5,274,161	5,274,161	5,274,161	5,133,332	2,390,431	0	0	70,144,418	3,873,967	1,016,967	4,419,025	0	(4,051,745)
2017	5,466,300	5,466,300	5,466,300	5,466,300	5,466,300	5,466,300	5,433,332	2,390,431	0	0	73,231,418	4,073,967	1,059,467	4,419,025	0	(4,230,731)
2018	5,658,438	5,658,438	5,658,438	5,658,438	5,658,438	5,658,438	5,733,332	2,390,431	0	0	76,318,418	4,273,967	1,101,967	4,419,025	0	(4,409,717)
2019	5,850,576	5,850,576	5,850,576	5,850,576	5,850,576	5,850,576	6,033,332	2,390,431	0	0	79,405,418	4,473,967	1,144,467	4,419,025	0	(4,588,703)
2020	6,042,714	6,042,714	6,042,714	6,042,714	6,042,714	6,042,714	6,333,332	2,390,431	0	0	82,492,418	4,673,967	1,186,967	4,419,025	0	(4,767,689)
2021	6,234,852	6,234,852	6,234,852	6,234,852	6,234,852	6,234,852	6,633,332	2,390,431	0	0	85,579,418	4,873,967	1,229,467	4,419,025	0	(4,946,675)
2022	6,426,990	6,426,990	6,426,990	6,426,990	6,426,990	6,426,990	6,933,332	2,390,431	0	0	88,666,418	5,073,967	1,271,967	4,419,025	0	(5,125,661)
2023	6,619,128	6,619,128	6,619,128	6,619,128	6,619,128	6,619,128	7,233,332	2,390,431	0	0	91,753,418	5,273,967	1,314,467	4,419,025	0	(5,304,647)
2024	6,811,266	6,811,266	6,811,266	6,811,266	6,811,266	6,811,266	7,533,332	2,390,431	0	0	94,840,418	5,473,967	1,356,967	4,419,025	0	(5,483,633)
2025	7,003,404	7,003,404	7,003,404	7,003,404	7,003,404	7,003,404	7,833,332	2,390,431	0	0	97,927,418	5,673,967	1,399,467	4,419,025	0	(5,662,619)
2026	7,195,542	7,195,542	7,195,542	7,195,542	7,195,542	7,195,542	8,133,332	2,390,431	0	0	101,014,418	5,873,967	1,441,967	4,419,025	0	(5,841,605)
2027	7,387,680	7,387,680	7,387,680	7,387,680	7,387,680	7,387,680	8,433,332	2,390,431	0	0	104,101,418	6,073,967	1,484,467	4,419,025	0	(6,020,591)
2028	7,579,818	7,579,818	7,579,818	7,579,818	7,579,818	7,579,818	8,733,332	2,390,431	0	0	107,188,418	6,273,967	1,526,967	4,419,025	0	(6,199,577)
2029	7,771,956	7,771,956	7,771,956	7,771,956	7,771,956	7,771,956	9,033,332	2,390,431	0	0	110,275,418	6,473,967	1,569,467	4,419,025	0	(6,378,563)
2030	7,964,094	7,964,094	7,964,094	7,964,094	7,964,094	7,964,094	9,333,332	2,390,431	0	0	113,362,418	6,673,967	1,611,967	4,419,025	0	(6,557,549)
2031	8,156,232	8,156,232	8,156,232	8,156,232	8,156,232	8,156,232	9,633,332	2,390,431	0	0	116,449,418	6,873,967	1,654,467	4,419,025	0	(6,736,535)
2032	8,348,370	8,348,370	8,348,370	8,348,370	8,348,370	8,348,370	9,933,332	2,390,431	0	0	119,536,418	7,073,967	1,696,967	4,419,025	0	(6,915,521)
2033	8,540,508	8,540,508	8,540,508	8,540,508	8,540,508	8,540,508	10,233,332	2,390,431	0	0	122,623,418	7,273,967	1,739,467	4,419,025	0	(7,094,507)
2034	8,732,646	8,732,646	8,732,646	8,732,646	8,732,646	8,732,646	10,533,332	2,390,431	0	0	125,710,418	7,473,967	1,781,967	4,419,025	0	(7,273,493)
2035	8,924,784	8,924,784	8,924,784	8,924,784	8,924,784	8,924,784	10,833,332	2,390,431	0	0	128,797,418	7,673,967	1,824,467	4,419,025	0	(7,452,479)
2036	9,116,922	9,116,922	9,116,922	9,116,922	9,116,922	9,116,922	11,133,332	2,390,431	0	0	131,884,418	7,873,967	1,866,967	4,419,025	0	(7,631,465)
2037	9,309,060	9,309,060	9,309,060	9,309,060	9,309,060	9,309,060	11,433,332	2,390,431	0	0	134,971,418	8,073,967	1,909,467	4,419,025	0	(7,810,451)
2038	9,501,198	9,501,198	9,501,198	9,501,198	9,501,198	9,501,198	11,733,332	2,390,431	0	0	138,058,418	8,273,967	1,951,967	4,419,025	0	(7,989,437)
2039	9,693,336	9,693,336	9,693,336	9,693,336	9,693,336	9,693,336	12,033,332	2,390,431	0	0	141,145,418	8,473,967	1,994,467	4,419,025	0	(8,168,423)
2040	9,885,474	9,885,474	9,885,474	9,885,474	9,885,474	9,885,474	12,333,332	2,390,431	0	0	144,232,418	8,673,967	2,036,967	4,419,025	0	(8,347,409)
2041	10,077,612	10,077,612	10,077,612	10,077,612	10,077,612	10,077,612	12,633,332	2,390,431	0	0	147,319,418	8,873,967	2,079,467	4,419,025	0	(8,526,395)
2042	10,269,750	10,269,750	10,269,750	10,269,750	10,269,750	10,269,750	12,933,332	2,390,431	0	0	150,406,418	9,073,967	2,121,967	4,419,025	0	(8,705,381)
2043	10,461,888	10,461,888	10,461,888	10,461,888	10,461,888	10,461,888	13,233,332	2,390,431	0	0	153,493,418	9,273,967	2,164,467	4,419,025	0	(8,884,367)
2044	10,654,026	10,654,026	10,654,026	10,654,026	10,654,026	10,654,026	13,533,332	2,390,431	0	0	156,580,418	9,473,967	2,206,967	4,419,025	0	(9,063,353)
2045	10,846,164	10,846,164	10,846,164	10,846,164	10,846,164	10,846,164	13,833,332	2,390,431	0	0	159,667,418	9,673,967	2,249,467	4,419,025	0	(9,242,339)
2046	11,038,302	11,038,302	11,038,302	11,038,302	11,038,302	11,038,302	14,133,332	2,390,431	0	0	162,754,418	9,873,967	2,291,967	4,419,025	0	(9,421,325)
2047	11,230,440	11,230,440	11,230,440	11,230,440	11,230,440	11,230,440	14,433,332	2,390,431	0	0	165,841,418	10,073,967	2,334,467	4,419,025	0	(9,600,311)
2048	11,422,578	11,422,578	11,422,578	11,422,578	11,422,578	11,422,578	14,733,332	2,390,431	0	0	168,928,418	10,273,967	2,376,967	4,419,025	0	(9,779,297)
2049	11,614,716	11,614,716	11,614,716	11,614,716	11,614,716	11,614,716	15,033,332	2,390,431	0	0	172,015,418	10,473,967	2,419,467	4,419,025	0	(9,958,283)
2050	11,806,854	11,806,854	11,806,854	11,806,854	11,806,854	11,806,854	15,333,332	2,390,431	0	0	175,102,418	10,673,967	2,461,967	4,419,025	0	(10,137,269)
2051	12,000,000	12,000,000	12,000,000	12,000,000	12,000,000	12,000,000	15,633,332	2,390,431	0	0	178,189,418	10,873,967	2,504,467	4,419,025	0	(10,316,255)
2052	12,192,138	12,192,138	12,192,138	12,192,138	12,192,138	12,192,138	15,933,332	2,390,431	0	0	181,276,418	11,073,967	2,546,967	4,419,025	0	(10,495,241)
2053	12,384,276	12,384,276	12,384,276	12,384,276	12,384,276	12,384,276	16,233,332	2,390,431	0	0	184,363,418	11,273,967	2,589,467	4,419,025	0	(10,674,227)
2054	12,576,414	12,576,414	12													

Schedule 2B to Exhibit V  
Assumptions for Schedule 2A

See the attached

## Schedule 2B

# Marina City Club Rent Adjustment Example: Assumptions for Before Rent Adjustment

**PARTICIPATION FEE ASSUMPTIONS**

1/1/2004	Assumed Date of Start of Deal
6/1/2004	Date at Which Interest Begins to Accrue (Assuming April 1 Deal)
8.00%	Base County Target Earnings Rate
0.00%	Differential for County Target Earnings Rate
8.00%	County Target Earnings Rate - Ground Rent
8.00%	County Target Earnings Rate - Participation
4.00%	Interest Rate on Loan
67.2	Assumed Number of Units Sold Per Year
\$325,000	Assumed Average Selling Price - 2003 Dollars
8.00%	Assumed One-Time Increase in 2004
4.00%	Increase in Selling Prices - 2005 through 2037
2.67%	Increase in Selling Prices - 2038 through 2052
21,840,000	Assumed Unit Sale Proceeds in 2002
1.00%	Current Participation Fee Paid to County
2.50%	Participation Fee to be Paid to County Starting in 2003, through 2019
2.50%	Participation Fee to be Paid to County Starting in 2020 on
\$350,000	Assumed Promenade Value
0.00%	Increase in Participation Fee in 2026
1	Sale decay trigger - 1 indicates decay of 2 per year after 2040
1	Sales for 1st half of 2004 - 1 indicates NO sales for first half of 2004

**PERCENTAGE INDEX ASSUMPTIONS**

7.72%	2002 Increase in MCC Ground Rent (Actual)
7.76%	2003 assumed ground rent increase
3.75%	2004 assumed ground rent increase
3.75%	2005 assumed ground rent increase
2019	Rent Deficiency Analysis Year
3.75%	Shadow Rent Annual Percentage Increase from 2003 to March 2019
3.75%	Adjusted Shadow Rent Annual Percentage Increase starting in April 2019

Schedule 3A to Exhibit V

Spreadsheet Depicting Recalibration of Ground Rent Index

See the attached

The calculations and values reflected in the attached spreadsheet are based on the assumptions set forth in Schedule 3B.

### **Marina City Club Rent Adjustment Example: After Rent Adjustment**

**MCC Lookback Example b** **ids "After 1 not back"**

Schedule 3B to Exhibit V  
Assumptions for Schedule 3A

See the attached

## Schedule 3B

**Marina City Club Rent Adjustment Example:  
Assumptions for After Rent Adjustment****PARTICIPATION FEE ASSUMPTIONS**

1/1/2004	Assumed Date of Start of Deal
6/1/2004	Date at Which Interest Begins to Accrue (Assuming April 1 Deal)
8.00%	Base County Target Earnings Rate
0.00%	Differential for County Target Earnings Rate
8.00%	County Target Earnings Rate - Ground Rent
8.00%	County Target Earnings Rate - Participation
4.00%	Interest Rate on Loan
67.2	Assumed Number of Units Sold Per Year
\$325,000	Assumed Average Selling Price - 2003 Dollars
8.00%	Assumed One-Time Increase in 2004
4.00%	Increase in Selling Prices - 2005 through 2037
2.67%	Increase in Selling Prices - 2038 through 2052
21,840,000	Assumed Unit Sale Proceeds in 2002
1.00%	Current Participation Fee Paid to County
2.50%	Participation Fee to be Paid to County Starting in 2003, through 2019
2.50%	Participation Fee to be Paid to County Starting in 2020 on
\$350,000	Assumed Promenade Value
0.00%	Increase in Participation Fee in 2026
1	Sale decay trigger - 1 indicates decay of 2 per year after 2040
1	Sales for 1st half of 2004 - 1 indicates NO sales for first half of 2004

**PERCENTAGE INDEX ASSUMPTIONS**

7.72%	2002 Increase in MCC Ground Rent (Actual)
7.76%	2003 assumed ground rent increase
3.75%	2004 assumed ground rent increase
3.75%	2005 assumed ground rent increase
2019	Rent Deficiency Analysis Year
3.75%	Shadow Rent Annual Percentage Increase from 2003 to March 2019
4.21%	Adjusted Shadow Rent Annual Percentage Increase starting in April 2019

To determine Ground Rental Increase from Rent Adjustment Analysis, set the cell in BOLD to a new rate such that the Overall Shortfall Including Promenade Value at the bottom of column (16) of the calculation equals no more than (\$500,000).

Schedule 4A to Exhibit V

Spreadsheet Depicting Additional Potential Recalibration of Ground Rent Index

See the attached

The calculations and values reflected in the attached spreadsheet are based on the assumptions set forth in Schedule 4B.

## Schedule 4A

[illegible]

Schedule 4B to Exhibit V

Assumptions for Schedule 4A

See the attached

## Schedule 4B

## Marina City Club: Additional Potential Rent Example Assumptions

**PARTICIPATION FEE ASSUMPTIONS**

1/1/2004	Assumed Date of Start of Deal
6/1/2004	Date at Which Interest Begins to Accrue (Assuming April 1 Deal)
8.00%	Base County Target Earnings Rate
0.00%	Differential for County Target Earnings Rate
8.00%	County Target Earnings Rate - Ground Rent
8.00%	County Target Earnings Rate - Participation
4.00%	Interest Rate on Loan
67.2	Assumed Number of Units Sold Per Year
\$325,000	Assumed Average Selling Price - 2003 Dollars
8.00%	Assumed One-Time Increase in 2004
4.00%	Increase in Selling Prices - 2005 through 2037
2.67%	Increase in Selling Prices - 2038 through 2052
21,840,000	Assumed Unit Sale Proceeds in 2002
1.00%	Current Participation Fee Paid to County
2.50%	Participation Fee to be Paid to County Starting in 2003, through 2019
2.50%	Participation Fee to be Paid to County Starting in 2020 on
\$350,000	Assumed Promenade Value
0.00%	Increase in Participation Fee in 2026
1	Sale decay trigger - 1 indicates decay of 2 per year after 2040
1	Sales for 1st half of 2004 - 1 indicates NO sales for first half of 2004

**PERCENTAGE INDEX ASSUMPTIONS**

7.72%	2002 Increase in MCC Ground Rent (Actual)
7.76%	2003 assumed ground rent increase
3.75%	2004 assumed ground rent increase
3.75%	2005 assumed ground rent increase
2019	Rent Deficiency Analysis Year
3.75%	Shadow Rent Annual Percentage Increase from 2003 to March 2019
4.96%	Adjusted Shadow Rent Annual Percentage Increase starting in April 2019

**ILLUSTRATIVE CALCULATION OF ADDITIONAL POTENTIAL RENT DUE**

	Illustrative Percentage Rent Due at 12.5% Rate	Percentage Rent Due Assuming a 15% Rate starting 2016	Past Due Percentage Rent Owed to County	Assumed County Pool Rate	Cumulative Past Due Percentage Rent with Interest
2016	4,000,000	4,800,000	800,000	n/a	800,000
2017	4,150,000	4,980,000	830,000	4.5%	1,666,000
2018	4,305,625	5,166,750	861,125	4.0%	2,593,765
2019 (1 qtr only)	4,467,086	5,360,503	893,417	4.2%	2,844,354
Target Overall Shortfall Net of Easement Value, Including Cumulative Past Due Percentage Rent					\$2,344,354

To determine Ground Rental Increase from Rent Adjustment Analysis, set the cell in BOLD to a new rate such that the Overall Shortfall Net of Easement Value at the bottom of column (16) of the calculation equals no more than (\$500,000) PLUS the Cumulative Past Due Percentage Rent with Interest, as illustrated above.

## EXHIBIT W

### Provisions Regarding Condominium Project Maintenance Account

#### I. Definitions

As used in this Exhibit W:

“Accrued Administrative Transfer Fee Payment” means the amount, if any, paid to County by Lessee pursuant to clause (i) of paragraph 9 of Exhibit B to the amendment to the Lease captioned “Amendment No. 4 to the Second Amended and Restated Lease (Improved Parcel), No. 55624, Parcel No. 125R – Marina Del Rey Small Craft Harbor”.

“Applicable Percentage” means the aggregate “Operating Expense Percentage” for the Category A Units, as provided and as defined in the Master Condominium Sublease.

“Base Year Amount” means the product of (i) Two Million Four Hundred Twenty-Nine Thousand Eighty-Eight Dollars (\$2,429,088), and (ii) the Applicable Percentage.

“Condominium Project Repairs Account” has the meaning given such term in subsection 14.05.A of the Lease.

“Contributed Repair Funds” means, as of any date, all amounts deposited by County into the Condominium Project Repairs Account.

“County Pool Rate” means, for any applicable period, a floating rate equal to the investment yield earned on the County’s Treasury Pool during such period, as contained in County’s Report of Investments covering such period.

“Covered Repairs” means those repairs, refurbishments and improvements described on Schedule 1 attached hereto.

“Disbursed Repair Funds” means all amounts disbursed from the Condominium Project Repairs Account from time to time in accordance with Section III.E below.

“Disbursed Repair Funds Balance” means, as of any date, the amount equal to (i) the total Disbursed Repair Funds, plus (ii) the interest accrued thereon as provided in Section III.C below, minus (iii) the sum of the Accrued Administrative Transfer Fee Payment, if any, and all Increased Administrative Transfer Fees credited thereto pursuant to Section III.D below.

“Disbursement Request” means a written request by Lessee for a disbursement from the Condominium Project Repairs Account, in the form described in Section III.E below.

“Increased Administrative Transfer Fee” means an amount equal to sixty percent (60%) of each Administrative Transfer Fee paid to County by Lessee with respect to a Category A Unit pursuant to Section 5.12 of the Lease. No portion of any Administrative Transfer Fee relating to a Category B Unit shall be considered part of the “Increased Administrative Transfer

Fees” for purposes of this Exhibit W or any other provision of the Lease.

“Initial Deposit Date” means the date on which the Memorandum (as defined in Section 2 of the amendment to the Lease captioned “Amendment No. 4 to the Second Amended and Restated Lease (Improved Parcel) No. 55624, Parcel No. 125R-Marina del Rey Small Craft Harbor”) is recorded in the Official Records of Los Angeles County, California.

“Lien Waiver” means a Conditional Waiver and Release Upon Final Payment or an Unconditional Waiver and Release Upon Final Payment, in each case as described in and meeting the requirements of California Civil Code Section 3262, as it may be amended or replaced by successor statutes from time to time.

“Notice of Completion” means a notice of completion as described in and meeting the requirements of California Civil Code Section 3093, as it may be amended or replaced by successor statutes from time to time.

“Payment Credit Period” means the period commencing on the Initial Deposit Date and ending on the earlier of (i) December 31, 2022, or (ii) the date on which the Disbursed Repair Funds Balance has been reduced to zero pursuant to Section III.D below.

## II. County Contributions to Condominium Project Repairs Account

County shall make the following deposits into the Condominium Project Repairs Account:

(a) Not later than fifteen (15) days after the Initial Deposit Date, the product of (i) the amount of Two Million Nine Hundred Eighty-Eight Thousand Thirty-Nine Dollars (\$2,988,039), and (ii) the Applicable Percentage.

(b) Not later than January 10 of each of the years commencing with 2005 and ending with 2007, the amount by which the Percentage Rent for the Category A Units received by County for the immediately preceding year (i.e., 2004, 2005 and 2006, respectively) exceeds the Base Year Amount.

## III. Disbursements from Condominium Project Repairs Account

### A. Amounts Available for Disbursement

All funds in the Condominium Project Repairs Account shall be deemed to bear interest at the County Pool Rate, compounded annually, until disbursed pursuant to Section III.E below (i.e., the funds available for disbursement shall equal the Contributed Repair Funds plus the deemed interest thereon).

### B. Authorized Disbursements

The funds in the Condominium Project Repairs Account are to be disbursed to reimburse Lessee for the Applicable Percentage of the costs of the completed Covered Repairs, and for no other purpose. Such funds are not intended to be, and shall not be, disbursed to

reimburse the cost of the Covered Repairs allocable to the Category B Units. Lessee may request a disbursement from the Condominium Project Repairs Account in an amount equal to the Applicable Percentage of the cost of a particular Covered Repair when the same has been completed, as more particularly provided in and subject to the other disbursements conditions contained in Section III.E below. The costs of a Covered Repair that qualify for reimbursement shall include all hard and soft costs of designing, contracting for, supervising, and installing such Covered Repair, including, without limitation, all consultant, engineering, project design, architecture, bid supervision, construction management, permitting, plan check, life safety review, ADA compliance, and other similar costs relating to such Covered Repair.

C. Interest on Disbursed Repair Funds

Interest shall accrue on the Disbursed Repair Funds Balance then outstanding at the rate equal to the County Pool Rate, compounded annually, from the date disbursed until such time as the Disbursed Repair Funds Balance has been reduced to zero pursuant to Section III.D or otherwise paid in full pursuant to subsection 14.05.B of the Lease. Said interest shall be calculated on the basis of a 365-day year and the actual number of days elapsed.

D. Reduction and Payment of Disbursed Repair Funds Balance

The Accrued Administrative Transfer Fee Payment and each Increased Administrative Transfer Fee received by County during the Payment Credit Period shall be deemed to have been applied by County to the Disbursed Repair Funds Balance on the date received. As provided in subsection 14.05.B of the Lease, on February 28, 2023, Lessee shall pay County an amount equal to the remaining Disbursed Repair Funds Balance if the same has not been reduced to zero pursuant to the previous sentence or otherwise.

E. Disbursement Procedures

County shall disburse the funds in the Condominium Project Repairs Account to Lessee as it may request from time to time pursuant to a Disbursement Request in the form attached as Schedule 2 hereto, subject to and in accordance with the following conditions and procedures:

1. Lessee may not request a disbursement for a particular Covered Repair until it has been completed and all costs thereof have been paid in full.
2. A Disbursement Request may cover more than one Covered Repair.
3. Lessee may not deliver a Disbursement Request prior to the date that is thirty (30) days after the previous Disbursement Request, except as provided in paragraph 5 below.
4. Each Disbursement Request shall be accompanied by the following items for each Covered Repair that is the subject of such Disbursement Request:
  - (a) a copy of the recorded Notice of Completion relating to the applicable Covered Repair or, if no Notice of Completion is being recorded and a

prudent owner would not require the recordation of a Notice of Completion for the Covered Repair given its scope, cost and nature, a certificate from the general contractor stating that the applicable Covered Repair has been completed;

(b) copies of invoices from each contractor or vendor that supplied labor or materials for the applicable Covered Repair (said invoices must describe the project or job site location and the work or materials supplied in such a manner that it can reasonably be determined that the amounts paid to the contractor or vendor were for the applicable Covered Repair) that equal, in the aggregate, not less than the portion of the total cost of the Covered Repair set forth in the Disbursement Request for which reimbursement is requested;

(c) except as provided in subparagraph (d) below, a copy of a Lien Waiver from each contractor or vendor that supplied labor or materials for the applicable Covered Repair and, for each such Lien Waiver that is conditional, a copy of the check described in such Lien Waiver;

(d) for any person who provided labor, materials or services for the Covered Repair but from whom a Lien Waiver was not obtained, reasonably satisfactory evidence that such person has been paid in full or that Lessee has posted a bond therefor, in compliance with California Civil Code Section 3143 (if applicable) and Section 4.06.C of the Lease;

(e) reasonably satisfactory evidence that all permits required for the applicable Covered Repair were obtained and that the Covered Repair complies with all applicable laws, codes and regulations as completed (such compliance may be demonstrated by, among other things, proper notations on the permit card by the appropriate governmental official following his or her final inspection of the completed work); and

(f) such additional items as County may reasonably request to verify that the applicable Covered Repair has been completed and all costs thereof have been paid in full and that Lessee is in compliance with Section 4.06.C of the Lease.

5. Not later than fifteen (15) days after its receipt of a Disbursement Request and the related items described in paragraph 4 above, County shall either (i) disburse to Lessee an amount equal to the Applicable Percentage of the cost of the applicable Covered Repair, as demonstrated by the Disbursement Request and the related items, or (ii) notify Lessee in writing that County is disapproving the Disbursement Request on the grounds that it covers costs that are not attributable to a particular Covered Repair or that the Disbursement Request (or any of the related required items) is incomplete. If County disapproves a Disbursement Request because County determines that it is incomplete, then County's notice shall specify the incomplete or missing items; Lessee may then submit a revised Disbursement Request when it believes that the same is complete, and the County shall review the same and act in accordance with the first sentence of this paragraph 5 with respect thereto.

IV. Schedules

Schedules 1 and 2 to this Exhibit W are hereby incorporated into and form a part of this Exhibit W as if set forth herein in full.

Schedule 1 to Exhibit W

Covered Repairs

See the attached

**Schedule 1 to Exhibit W**  
**COVERED REPAIRS**

<i>Item Number</i>	<i>Description of Task</i>	<i>Completion Date</i>
<b><u>PART I - Priority Repairs</u></b>		
1	Replace 5 Trash Chutes	30 Months from effective date of Amendment # 4
2	Roof West Tower ( N & S )	30 Months from effective date of Amendment # 4
3	Retile Showers, replace leaking valves	36 Months from effective date of Amendment # 4
4	Install parking garage lighting in 24hr Lot	12 Months from effective date of Amendment # 4
5	Replace Roof Exhaust Fans	30 Months from effective date of Amendment # 4
6	Replace bilge pumps - basement	24 Months from effective date of Amendment #4
7	Replace Plaza level & Main backflow valves	24 Months from effective date of Amendment #4
8	Replace 4 boilers Center & East Twrs	20 Months from effective date of Amendment #4
9	Overhaul Center Tower Chiller	30 Months from effective date of Amendment #4
10	Replace Fire Pump Controllers	24 Months from effective date of Amendment #4
11	Rebuild 9 hydraulic Elevators	36 Months from effective date of Amendment #4
12	Exterior Stucco Repairs ETN, WTN & CTN	30 Months from effective date of Amendment #4
13	Repair Staircase Stucco Walls	30 Months from effective date of Amendment #4
14	Repave & rebuild Marina City Drive	36 Months from effective date of Amendment #4
15	Replace Chilled Water lines	36 Months from effective date of Amendment #4
16	Install Otis elevator sensors	24 Months from effective date of Amendment #4
17	Replace Exterior Glass & Frames	63 Months from effective date of Amendment #4
18	Paint / replace window aluminum mullions	36 Months from effective date of Amendment #4
19	Retile 3 pools & jacuzzi	36 Months from effective date of Amendment #4
20	Remove Planters & Install Pots @ 3 PK Str.	30 Months from effective date of Amendment #4
21	Structural concrete repair 3 Plaza's & Tower Pk	18 Months from effective date of Amendment #4
22	Center Tower roof - North	36 Months from effective date of Amendment #4
23	Center Tower roof - South	36 Months from effective date of Amendment #4
24	Replace West Tower cooling tower	36 Months from effective date of Amendment #4
25	Replace garage lighting	12 Months from effective date of Amendment #4
26	Rebuild Center Tower Circulating Pump	12 Months from effective date of Amendment #4
27	Parking - Structural Repairs - Center	30 Months from effective date of Amendment #4
28	Parking - Structural Repairs - East	36 Months from effective date of Amendment #4
29	Parking - Structural Repairs - West	42 Months from effective date of Amendment #4
30	Replace Trash Chute - West Tower North	12 Months from effective date of Amendment #4
31	Replace 2 boilers - West Tower	12 Months from effective date of Amendment #4

**PART II - Other Repairs**

- 1 Replace Heat Pumps - West Tower
- 2 Replace and waterproof center tower kitchen floor
- 3 Repair structural elements of shared area decks
- 4 Paint East Tower exterior
- 5 Paint Center Tower exterior
- 6 Paint West Tower exterior
- 7 Install individual heat pumps in Center Tower
- 8 Install individual heat pumps in East Tower
- 9 Replaced 10 heat pumps - West Tower
- 10 Replace galv. plumbing in CT units & related Shared Area
- 11 Replace galv. plumbing in ET units & related Shared Area
- 12 Replace galv. plumbing in WT units & related Shared Area
- 13 Replace HVAC system, floors 1-3 Center Tower
- 14 Recaulk & repair of CT & related SA Windows & Mullions
- 15 Recaulk & repair of ET & related SA Windows & Mullions
- 16 Recaulk & repair of WT & related SA Windows & Mullions
- 17 Rebuild Fancoil units in shared area

Schedule 2 to Exhibit W

Form of Disbursement Request

DISBURSEMENT REQUEST  
(Marina City Club Condominiums)

This Disbursement Request is made by Essex Marina City Club, L.P., a California limited partnership ("Lessee") for the purpose of requesting a disbursement from the "Condominium Project Repairs Account" described in Exhibit W to that certain Amendment No. 4 to the Second Amended and Restated Lease (Improved Parcel), No. 55624, Parcel No. 125R – Marina Del Rey Small Craft Harbor dated as of \_\_\_\_\_, 2004 between County of Los Angeles and Lessee. All initially-capitalized terms used but not defined in this Disbursement Request have the meanings given such terms in said Exhibit W.

1. Covered Repair(s). The Covered Repair(s) that is/are the subject of this Disbursement Request consists of *[describe work, utilizing the same description as set forth in Schedule 1]*.

2. Cost of Covered Repair(s); Requested Disbursement Amount. Lessee and/or the Owners Association has paid a total of \$ \_\_\_\_\_ for the Covered Repair(s) that is/are the subject of this Disbursement Request. The Applicable Percentage (i.e., the portion of the cost of the Covered Repair attributable to the Category A Units to be reimbursed by County to the extent of the funds available in the Condominium Project Repairs Account) is \_\_\_\_%. Accordingly, Lessee hereby requests a disbursement from the Condominium Project Repairs Account in the amount of \$ \_\_\_\_\_.<sup>1</sup>

3. Certifications. To induce County to make the disbursement from the Condominium Project Repairs Account requested in this Disbursement Request, Lessee hereby certifies, to the best of its knowledge, as follows:

3.1 the Covered Repair(s) that is/are the subject of this Disbursement Request have been completed and accepted by Lessee (subject to any latent or other defects of which Lessee is unaware);

3.2 the costs of the Covered Repair(s) that is/are the subject of this Disbursement Request have been paid in full, and the amount set forth in the first sentence of paragraph 2 of this Disbursement Request is net and exclusive of any rebates, refunds, credits and other discounts provided to Lessee or the Owners Association with respect to such Covered Repair(s);

3.3 except as otherwise stated in Attachment 4, a Lien Waiver was obtained from each person or entity that supplied labor or materials for, or otherwise rendered services relating to, the Covered Repair(s) that is/are the subject of this Disbursement Request;

---

<sup>1</sup> The amount to be disbursed is the product of the cost of the Covered Repair and the Applicable Percentage.

3.4 the aggregate amount of the Disbursed Repair Funds (excluding amounts to be disbursed pursuant to this Disbursement Request) equals \$\_\_\_\_\_;

3.5 true and correct copies of the following items for each Covered Repair that is the subject of this Disbursement Request are attached hereto:

- (1) as Attachment 1, a copy of the [recorded Notice of Completion or certificate from the general contractor stating that the Covered Repair has been completed];
- (2) as Attachment 2, copies of all invoices for the portion of the Covered Repair for which reimbursement is requested;
- (3) as Attachment 3, copies of all Lien Waivers relating to the Covered Repair;
- (4) as Attachment 4, (i) a list of all persons and entities who provided labor, materials or services for the Covered Repair from whom or which a Lien Waiver was not obtained, and (ii) documents evidencing that such persons and entities have been paid in full or that Lessee has posted a bond therefor, in compliance with California Civil Code Section 3143 (if applicable) and Section 4.06.C of the Lease;
- (5) as Attachment 5, documents evidencing that all permits required for the applicable Covered Repair were obtained and that the Covered Repair complies with all applicable laws, codes and regulations as completed;
- (6) as Attachment 6, a certificate signed by two officers of the Owners Association that states that the Owners Association has accepted the applicable Covered Repair (subject to any latent or other defects of which the Owners Association is unaware); [and
- (7) as Attachment 7, *describe other documents required by County.*]

3.6 each of the undersigned individuals is an officer of Lessee and holds the title listed beneath his or her printed name.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

Each of the individuals executing this Disbursement Request on behalf of Lessee represents, warrants and certifies to County that, to the best of his or her information and belief, each of the statements made in this Disbursement Request is true and accurate in all respects.

LESSEE: ESSEX MARINA CITY CLUB, L.P.,  
a California limited partnership

By: Essex MCC, LLC,  
a Delaware limited liability company,  
its general partner

By: Essex Portfolio, L.P.,  
a California limited partnership,  
its sole member

By: Essex Property Trust, Inc.,  
a Maryland corporation,  
its general partner

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_



June 3, 2004

**Stan Wisniewski**  
Director

**Kerry Gottlieb**  
Chief Deputy

TO: Small Craft Harbor Commission  
FROM: *Kerry Gottlieb-Silverstein for*  
Stan Wisniewski, Director

SUBJECT: **AGENDA ITEM 6a - ONGOING ACTIVITIES REPORT**

**BOARD OF SUPERVISORS ACTIONS ON ITEMS RELATING TO MARINA  
DEL REY**

At its May 18, 2004 meeting, the Board of Supervisors approved the following:

- (1) Five-year license agreements with various concessionaires/vendors, with a first-year revenue total of \$390,951, for bike and skate rentals on Venice Beach, food and beverage service at seven concession stands and five mobile food vending locations at various County-owned or operated beaches and one snack bar in Burton Chace Park, hang gliding activities and lessons at Dockweiler Beach, and beach merchandise rental and sales at Zuma Beach.
- (2) Two-year contract with Pacific Adventure Cruises, Inc., at an annual cost not to exceed \$311,821, for Marina del Rey water shuttle service during the summer season, effective May 28, 2004 through September 5, 2005.
- (3) Consent to Assignment of Lease for Parcel 64R, Villa Venetia Apartments, from Tuxedo Real Estate Limited Partnership to Lyon Villa Venetia.
- (4) Three-year contract with Concept Marine Associates for premises maintenance inspection services to identify maintenance deficiencies and necessary structural repairs on lessee improvements at the Marina de Rey harbor and surrounding unincorporated area adjacent to the communities in Venice and Playa del Rey, at an annual cost not to exceed \$240,000.

Items 1-3 were previously considered and recommended by your Commission.

At its May 25, 2004 meeting, the Board of Supervisors, in closed session, provided instructions to its real estate negotiators with regards to a proposed new lease and lease extension for Parcels 55/W/56S (Fisherman's Village).

### **DESIGN CONTROL BOARD MINUTES**

The draft minutes for the Design Control Board meeting of May 20, 2004 are attached.

### **PUBLIC COMMENT FOLLOW-UP**

#### **-- Response to Mr. John Davis' list of Questions Pertaining to Legal and Regulatory Issues**

At the Commission's May meeting, one member of the public, Mr. John Davis, provided two written lists – one containing 12 and the other containing 20 items – pertaining to a variety of Marina related legal and regulatory issues. Many of the items listed appear to have been advanced by this same party on numerous occasions in the past and have been fully discussed and answered at previous meetings of the Commission and by various County personnel, including the Department, the office of County Counsel and the Sheriff's Department. While the lists contain numerous compound and rhetorical statements as well as some questions, thus making response somewhat difficult, we have nonetheless prepared a letter to Mr. Davis responding, insofar as possible, to the items listed and further providing him with contact information that may direct him to further information relating to his submission. This letter is attached.

#### **-- Response to Ms. Carla Andrus' Questions Concerning Marina Slips**

Also at the Commission's May 12 meeting, Ms. Carla Andrus propounded a number of verbal questions relating to current and future replacement of slips in the Marina. The Chairman requested that Ms. Andrus submit her questions in writing so that they could be considered. The Department only recently (June 1, 2004) received a written communication from Ms. Andrus addressed to your Commission and relating to those questions. The Department is in the process of preparing a response to Ms. Andrus' inquiries and will copy your Commission on its response.

#### **-- Ms. Patricia Raye's Submission of Boat CF6542 HH Fees**

At the May 12, 2004 Small Craft Harbor Commission meeting, Patricia Raye addressed the Commission and asserted that she was unfairly denied the right to dock at the transient docks. Ms. Raye presented a copy of the unpaid balance due statement given to her by Chace Park staff, whose refusal to allow moorage was primarily based upon the unpaid bill pursuant to Policy Statement #30,

Section 4.1. Ms. Raye contends that several of the dates in question were "red flag" (Small Craft Advisory) days for which no payment is due. Listed below is a chart comparing the dates in question with the Small Craft Advisory dates as posted by the Sheriff's Harbor Patrol, showing that the moorage was properly denied based upon unpaid fees:

<b>DAYS FEES ARE CHARGED AND NO SMALL CRAFT ADVISORY IN EFFECT</b>	<b>DAYS FEES ARE NOT CHARGED AND SMALL CRAFT ADVISORY IN EFFECT</b>
01/12/04 to 01/13/04	01/02/04 to 01/03/04
01/21/04 to 01/22/04	01/22/04 to 01/23/04
01/23/04 to 01/24/04	01/25/04 to 01/26/04
02/02/04 to 02/03/04	01/31/04 to 02/01/04
02/05/04 to 02/06/04	03/26/04 to 03/27/04
02/06/04 to 02/07/04	03/27/04 to 03/28/04
02/11/04 to 02/12/04	
02/12/04 to 02/13/04	
02/15/04 to 02/16/04	TOTAL AMOUNT WAIVED \$75
02/16/04 to 02/17/04	
02/17/04 to 02/18/04	
02/18/04 to 02/19/04	
02/29/04 to 03/01/04	
03/04/04 to 03/05/04	
03/11/04 to 03/12/04	
03/15/04 to 03/16/04	
03/16/04 to 03/17/04	
04/09/04 to 04/10/04	
04/10/04 to 04/11/04	
TOTAL AMOUNT OWED \$250	

-- **Relationship Between the Harbor Patrol and Chace Park Staff**

Commissoner Stevens inquired into the status of the working relationship between the Harbor Patrol and Chace Park staff. Currently, the two agencies are working cooperatively to address park management and park safety issues, including matters arising at the transient docks. Park staff requests assistance from the Harbor Patrol, as needed, for enforcement of park policies, rules and regulations. The Harbor Patrol does not take direction, but does solicit input, from park staff.

-- **Chace Park Transient Dock Policy #30, Section 3.12**

At the May 12, 2004 meeting, a question arose as to denying moorage at the transient docks to boaters who had been evicted from another anchorage in the Marina. Commissioner Searcy asked if such a policy exists, if it is enforceable, and, more generally, what is the intended use of the transient docks.

The intended use of the transient docks is set forth in Policy Statement No. 30 as follows: "In general, these docks are available for use by vessels transiting the coast and which may be seeking refuge from inclement weather, or laying for minor repairs, replenishing supplies, or visiting. A portion of these docks – posted as 'Park Dock, 4-hour maximum' – may also be used by locally based vessels under a casual visitor status."

Section 3.12 does contain a provision authorizing staff to deny moorage to "vessels evicted from a Marina del Rey anchorage." Notwithstanding that provision, the Department will allow such vessels to moor in the transient docks on the same basis as other vessels until such time as the vessel or its owner or occupier violates Park rules or regulations or otherwise engages in proscribed behaviors. The Department will amend Section 3.12 to more specifically reflect this de facto interpretation.

SW:tm  
Attachments



*To enrich lives through effective and caring service*



June 3, 2004

Mr. John Davis  
P.O. Box 10152  
Marina del Rey, CA 90295

Dear Mr. Davis:

**RE: STATEMENTS SUBMITTED AT THE MAY 12, 2004 SCHC MEETING**

This is in response to the two lists of statements/questions you submitted to the secretary of the Small Craft Harbor Commission (SCHC) at its meeting of May 12, 2004 (copies attached). One list contains 12 numbered items, the other contains 20 (numbered 0 to 19).

Unfortunately, as many of the items in your communications appear to be couched as a combination of compound rhetorical questions, statements, opinion and/or often proceed from assumptions that we do not believe are accurate or complete, it is difficult to coherently respond. In addition, many of the items listed in your correspondence have been advanced by you on numerous occasions in the past and have been fully discussed and answered by various County personnel, including this Department, the office of County Counsel and the Sheriff's Department. I must, therefore, initially respectfully inform you that we will not provide, as we have at times in the past, line-by-line responses to many of your questions.

As to your list of 12 items, please consider the following

Your items numbered 1 and 2 raise the issue of the County's ownership of Marina del Rey. As you are aware, the office of County Counsel has issued its analysis and opinion concerning the County's right, title and interest in Marina del Rey. You may feel free to direct further inquiry to that office.

Your item 3 lacks specifics and we are unable to respond relating to your statement relating to a purported "...federal easement at the east end of the main channel", nor are we able to determine what slips you may be referencing.

Mr. Davis  
June 3, 2004  
Page 2

The first part of your item numbered 4 is a statement with which we disagree, rather than an actionable request for information. In second part of this item, you ask that the "Boating and Waterways" report be printed and retained for the public record. As you have submitted same as part of your public comment, it is already part of the record of the SCHC. Please also be advised that this report, originally issued in 2002, is available along with other updated material that may be helpful to you on the Department of Boating and Waterways website at <http://www.dbw.ca.gov/>.

You should refer your comments/questions 5 and 6, relating to the Sheriff's Department directly to the Sheriff's Department.

Your questions 7 and 12 assumes that; a) all activity at the SCHC meetings are "hearings" and; b) that relevant material submitted to the SCHC as it relates to an item being considered for recommendation is not transmitted to the Board of Supervisors. Both assumptions are incorrect. Separately, if you have material of a general nature or any other material you wish to transmit to the Board or any other public body or agency for consideration, you are always free to do so directly. We have on numerous occasions provided to you individually, and to the public at large through materials made available at each SCHC meeting, detailed contact information for the Board of Supervisors, Marina del Rey Design Control Board, Department of Regional Planning, California Coastal Commission and other public bodies that consider Marina related matters. If you would like further copies of this information or other contact information, please advise us and we will be pleased to provide the materials or information.

Your item numbered 8 assumes that selection processes that recommend Request for Proposals information to the director of the Department are subject to the requirements of the Brown Act. The office of County Counsel has advised that RFP selection committee meetings are not subject to Brown Act requirements. Any further questions regarding this matter may be addressed directly to the office of County Counsel.

Your item numbered 9 appears to infer that all boats tied at the slips nearest the seawall are doing so illegally and that the lessees do not pay County a percentage rent on the slip rents that they collect from boats at such slips. Both assumptions are incorrect. As long as there is adequate clearance between the boat and the wall, the tie up is not in violation of Marina standards. To our knowledge, payments due the County for all such boat slips are being appropriately reported and paid. Nonetheless, our property agents regularly visit all leaseholds and also conduct reviews of lessees' gross receipts reports on a monthly basis. All gross

Mr. Davis  
June 3, 2004  
Page 3

receipts reports are also subject to periodic audit by the County's third-party auditor. If you are aware of instances of purported non-payment for slips or for any other sums due the County we would be pleased to be made aware of specific instances so that we can follow-up with our investigation and any appropriate action found necessary.

As to your items numbered 10 and 11, respectively: County leases for Marina facilities are prepared in conformance with applicable laws and regulations. Questions concerning individual laws or regulations as they relate to Marina leases should be directed to the office of County Counsel. Separately, I am unclear as to why you find fault with what you purport to have been a reference by the SCHC Chairman at an unspecified time, presumably during the course of an SCHC meeting, to a legal opinion by the office of County Counsel as a "legal brief [sic]."

Of the 20 questions you submitted separately, all are related to the underground line on Via Marina that recently had a minor unpressurized leakage. Your statements and queries relate to a number of subjects including regulation, mapping, revenue and abandonment procedures. We are pleased to provide you the following information:

- You may contact Mr. Rex Ball, Senior Real Property Agent, of the Chief Administrative Office, regarding the gas company's oil and gas pipeline franchises in Marina del Rey and the revenues therefrom. Mr. Ball may be reached at (213) 974-4247.
- If you would like information concerning either geotechnical issues in the Marina or information relating to the closure of oil or gas facilities, please contact the following:

County of Los Angeles Department of Public Works (DPW)– Building & Safety.  
24320 S. Narbonne  
Lomita, CA 90717  
310-534-3760  
8:00 a.m. to 4:30 p.m., Monday thru Friday.

State of California Department of Oil and Gas Geothermal Resources (DOGGR)  
DOG-District 1  
5816 Corporate Avenue, Suite 200  
Cypress, CA 906-4731  
Tel. (714) 816-6847  
<http://www.consrv.ca.gov/DOG/>

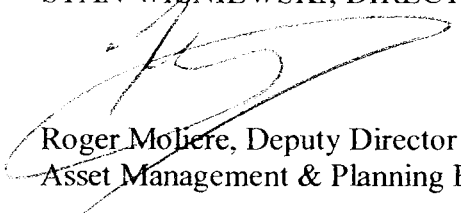
Mr. Davis  
June 3, 2004  
Page 4

- We have consulted with the Gas Company and they advised that they would be pleased to share with you any public information you wish to know about their pipelines. Ms. Sharon O'Rourke, the company's spokeswoman, can be reached by e-mail as follows: [sorourke@semprautilities.com](mailto:sorourke@semprautilities.com).

If you would like any further information or wish to further clarify any of the items in your correspondence, please contact me at your convenience.

Very truly yours,

DEPARTMENT OF BEACHES AND HARBORS  
STAN WISNIEWSKI, DIRECTOR



Roger Moliere, Deputy Director  
Asset Management & Planning Bureau

c: Each Small Craft Harbor Commissioner  
County Counsel

Attachments (2)

SW:rm

To Los Angeles County Small Craft Harbor Commission 5/12/04

From: John Davis

RE AGENDA ITEM 6A, UNDERGROUND PIPELINE

0. How did the Director determine that all gas & oil wells have been unhooked  
The same question is asked regarding the oil line

1. When did the County of Los Angeles learn of the existence of the gas pipeline that has been used to transmit gas and oil?
2. Did the County provide surface easements across several leases in Marina del Rey by amendment to those leases.
3. Does the County and or Lessees receive revenues from this line?
4. If so, how much and how are the amount(s) determined.
5. When did the County learn of the Oil line referred to in today's report from the County? Does the County and or Lessees receive revenues from this oil line.
6. Why does the County present a map from Navigation Technologies instead of using County and or CA Department of Conservation Division of Oil and Gas (DOGER) and Geothermal Resources that more accurately show the lines and wells that are hooked up too them.
7. Did the County of Los Angeles require that NavTech sign a non-disclosure agreement that prevents oil and or gas wells hooked up to these lines from being disclosed.
8. What oil and or gas wells have been hooked up to or are hooked up to either of these lines and where are the production records.
9. Does the County of Los Angeles own and or lease these wells and if so what revenues have been generated from them for the County and or Lessees.
10. Why didn't the County disclose the existence of these wells during the Environmental Impact Report for Marina Two Project?
11. Why does the County Claim the gas line will be abandoned when it is already abandoned according to DOGR?
12. Why aren't the Line(s) being decommissioned according to DOGR standards?
13. Have the Line(s) contaminated the soil and groundwater?
14. Has the public living on or near these lines and wells been notified of the danger they pose?
15. Why does the County state it will ensure the method of abandonment will be the most appropriate when the County of Los Angles has no control whatsoever of the process that is controlled by DOGER.
16. Has the County or the owner of the two lines inspected them for seismic, age induced, or corrosion damage that could cause leakage that could endanger the public?
17. Is the County aware that Sempra Energy stated to the Argonaut that it used at least one of the lines to "flow gas" indicating the line was active.
18. Is the County aware that Sempra Energy is storing natural gas under the County owned Harbor?
19. Is the County receiving revenues from Sempra to store gas deep below the surface of the public harbor?

Submitted  
To Toni @  
5/12 SCHC  
mtg

Department of Beaches and Harbors		
MAY 12 '04		
	Info	Act
Director		
Chief Deputy Director		
Deputy Director		
Executive Assistant		
Admin. Services		
Asset Management		
Facilities Property Mice		
Community Services		
Planning		

To: Small Craft Harbor Commission

5/12/04

From: John Davis

Re: Questions for the Commission

1. Is there an uncodified statute of the State of California of 1959 that indicates the County of Los Angeles will own and operate Marina del Rey.
2. Is there an uncodified statute of the State of California of 1952 whereby the County of Los Angeles is loaned ten million dollars from State of California Tideland funds to acquire land needed to construct Marina del Rey.
3. Why have several boat slips been constructed in the federal easement at the east end of the main channel without coastal development permits. Does the County receive revenues from these slips?
4. Why is the Executive Director misleading this Commission about the demand for sizes of boat slips in Marina del Rey, which is one of the exceptions to overall trends according to the Boating and Waterways report that is being transmitted to this commission on compact disc today. I ask that this report be printed for the Commission and be retained for the public record.
5. Why isn't the Sheriff's Department enforcing County Airport and Harbors codes.
6. Why isn't the Sheriff's Department enforcing the City of Los Angeles Harbor Code per the County's agreement with the City? *certain*
7. Why isn't the testimony and materials from these hearings being transmitted to the Board of Supervisors in relation to Coastal Development Permit recommendations from this Commission.
8. When does the RFP selection committee meet, where are notices of the meetings posted and are the meetings open to the public as required by the Brown Act?
9. Why does the County knowingly allow Leases to charge boaters to tie their vessels next to the sea wall illegally and why doesn't the county receive any of the revenues from such tie ups.
10. Why is the County, in contradiction to the State Constitution, the Marina del Rey Bond Measure, the State Harbor Law, and U.S. House of Representatives Document 389 charging market rates instead of the required fair and reasonable requirement.
11. Why did the Chairman of this Commission refer to a report submitted by Council Rick Weiss regarding ownership of Marina del Rey as a legal brief?
12. *are materials & letters submitted to this commission transmitted to the Board of Supervisors, and if not why?*

*Submitted to  
Joan @ 5/12  
SCHC mtg*

Department of Beaches and Harbors		
MAY 12 2004		
	Info	Act
Director		
Chief Deputy Director		
Deputy Director		
Executive Assistant		
Admin. Services		
Asset Management		
Facilities Property Mgt		
Community		

# **DRAFT**

## **MINUTES OF MARINA DEL REY DESIGN CONTROL BOARD**

**May 20, 2004**

**Department of Beaches and Harbors  
Burton Chace County Park  
Community Building – 13650 Mindanao Way  
Marina del Rey, CA 90292**

Members Present: Susan Cloke, First District, Chair  
David Abelar, Second District  
Katherine Spitz, Third District  
Jackie Ingon, Fourth District

Members Absent: Tony Wong, Fifth District

Department Staff Present: Roger Moliere, Deputy Director  
Joseph Chesler, Chief, Planning Division  
Julie Carpenter, Planner  
LaTrina Hancock-Perry, Secretary

County Staff Present: Tom Faughnan, Office of the County Counsel  
Kevin Johnson, Department of Regional Planning

Guests Present: Steve Landon, Ritz-Carlton Marina del Rey  
Miriam Tate, Miriam Tate Company  
Al Udwin, Archstone  
Marianne Liggett, TGP, Inc.  
David Williams, Caruso Affiliated  
Doris Sorensen, Pacific Ocean Management  
Pat Younis, Bridge Group  
David Morgan, EDAW  
Tim Riley, Marina del Rey Lessees Association  
Donald Klein, Coalition to Save the Marina  
Ron Hoffman, Sea Plane's Inc.

1. **Call to Order & Absences**

Ms. Cloke called the meeting to order at 2:14 p.m. Mr. Abelar led the pledge of allegiance. **Mr. Abelar (Spitz) moved to approve the absence of Commissioner Tony Wong. Motion passed unanimously.**

2. **Approval of Minutes – Meeting of March 25, 2004 and April 15, 2004**

Held until the end of the meeting

3. **OLD BUSINESS**

A. **Parcel 102 – Archstone Communities - (DCB #03-016-B)**

Consideration of a revised color palette.

The Department recommended APPROVAL using the prior color palette or a similar one, with the following conditions:

1. That the Board approve some variant of the previous Coastal/Mediterranean color palette presented at the February 2004 meeting to add elegance and a muted blend of color reminiscent of the Marina neighborhood context; and
2. That the applicant be permitted to continue to use existing temporary signage as indicated in Permit No. TP-04-005-E, through September 1, 2004.

Al Udwin, Archstone Communities, spoke to the Board regarding their proposed project and the new color scheme. Mr. Udwin introduced Miriam Tate, color consultant for the project. Ms. Tate mentioned that the colors she chose for this project were crisp, unique and artistic and nautical. Ms. Tate described her vision as trying to try to create a design that is memorable and a hallmark to the architecture, but balanced color wise.

Mr. Udwin requested three items: 1) extension of their temporary sign permit for a period that would allow the applicant to gain approval on the color scheme so that it could be incorporated into the new sign and also to give time for the development of a significant entry monument, which will be presented in a subsequent meeting. 2) dialogue regarding the color scheme giving the applicant a chance to interact if necessary, and 3) direction from the Board at the conclusion of this meeting advising what the applicant needs to do next.

Ms. Cloke asked the applicant how much more time would be needed regarding their temporary sign. Mr. Udwin advised the time extension would depend on the approval of the colors by the Board and then an additional 60-days to construct the permanent sign.

Public Comment

None

Board Comments

Ms. Spitz asked if the applicant still has their original color palette. The applicant does have the original color palette. Mr. Chesler advised the Board that the Department believes the former color palette is more elegant and provides more continuity in terms of the Marina by today's standards.

Ms. Cloke asked staff if the applicant was offered the chance to consult with one of the four Design Consultants for the Department. Mr. Moliere advised the Board that it had not been done in the past but has recently been discussed and the Department would be happy to offer the applicant a chance to meet with the consultants.

Ms. Cloke said her main concern was the color on these very tall buildings for this project. She also suggested to the applicant to consult with one of the Department's Urban Design Consultants for assistance. Ms. Spitz concurred with Ms. Cloke and advised that she had some concerns with the boldness of the color palette, and the light and dark aspect on the taller buildings. Ms. Cloke asked the applicant if the building was going to be re-plastered. Mr. Udwin advised that the building would not be re-plastered but that there is a consultant for this project that will advise the applicant regarding the exterior shell of the building. The Board advised that since the building will be repainted and not re-plastered this too should be taken into account regarding the colors for the building. Ms. Ignon expressed her appreciation of how the building has been divided for the color scheme and advised the applicant to keep the colors soft and to try to manipulate the shades of color. Ms. Tate showed the Board alternate colors for the project and explained where the colors would be on the buildings.

Mr. Udwin appreciated the Board's suggestion of meeting with the Urban Design Consultants for the Marina, but also expressed frustration noting that this should have been suggested during the start of this process last year. Ms. Cloke advised Mr. Udwin that meeting with the Urban Design Consultant is only an offer and not mandatory. Mr. Udwin asked if a color palette was achieved through the direction of the urban design consultant, would it be approved? Ms. Cloke explained that the Board is trying to find a way to solve the problem with the proposed colors of the building by suggesting a meeting with the consultant.

Mr. Udwin stated that he would like to engage in conversation with the Board regarding making adjustments to the submitted color schemes by allowing the applicant to show variations of the colors that were partially approved by the Board. Mr. Udwin also advised of time constraints for the renovations of the buildings and how non-approval of the color scheme will hold up the project. Ms. Spitz asked if approval is obtained at the next meeting, would other deadlines and

schedules be met? Ms. Spitz also mentioned that when certain colors are applied to tall buildings the colors show differently. Ms. Spitz suggested selecting one of the three palettes that were presented at prior meetings, which can be refined to the applicants design with or without help from the Urban Design Consultant.

Mr. Abelar thinks that the design is too contrasting, and commented that the building does not have a dominating color. Mr. Abelar suggested because the building is so tall the colors should be soothing and colorful.

Ms. Ignon advised the applicant to pursue the third color palette, presented at today's meeting.

Ms. Cloke advised the applicant instead of thinking about colors, think about the texture of the building, the balconies should have colored glass, blue or green and the Board would need to see how the third color palette would look and relate to each other by showing the Board renderings with the proposed colors.

**Ms. Cloke (Ignon) moved to continue the applicant's request for 30-days and if the applicant desires a timely meeting, include their color consultant, Ms. Tate, and the Department's Urban Design Consultants for the Marina. Motion passed unanimously.**

**Ms. Cloke (Abelar) moved to grant the applicant a 30-day extension of the existing temporary signage. The applicant will return at the next meeting, in June 2004, at which time the Board will have a more accurate assessment of how much more time will be needed regarding the approval of colors. Motion passed unanimously.**

**B. Parcel 50 – Marina Waterside Shopping Center – (DCB #04-007-B)**

Consideration of applicant's response to comments from the April meeting, including proposed building material changes, lighting design modification, landscaping adjustments, and tenant signage.

David Williams, architect for Caruso, explained in detail, the renderings and corresponding color materials boards as well as changes made on the prior submittal. Mr. Williams asked that the sign guidelines be approved and used as a guideline for project signage.

Marianne Liggett, TGP, Inc., landscape architect, discussed the landscape changes that were directed by the Board. Ms. Ligette advised the Board that for the Lincoln Boulevard frontage, the applicant does not consider the use of beach grasses as a compatible aesthetic. Drought tolerant plantings such as New Zealand Flax, Evening Primrose, Pink Breath of Heaven, Fortnight Lily, Blue Hibiscus, *Lantana*, Ivy Geranium, Birds of Paradise, *Ceanothus*, *Penstemon* and

Flowering Salvia will be used. The applicant requests replacing the turf grass with a more drought tolerant variety as well as a new, more efficient water irrigation system. Few Lincoln Boulevard frontages provide a green edge and the applicant believes that the renovated project should be attractive to the public. Ms. Liggett advised that additional patio dining at the Ralphs Market would be provided. Bike racks will be added to the front of the project.

Ms. Liggett advised the Board that the applicant will "improve water quality through installing all required water clarifiers and filters for parking lot run-off." Ms. Liggett also advised the Board that the applicant does not want the parking lot run-off (with its accumulated gas, oil and debris) to go into planters, and do not want the pollutants to adversely impact the new plants.

Public Comment

None

Board Comments

Ms. Ignon advised the applicant that the proposed building changes are nice; the plant pallet contained good substitutions, but she was concerned about the palm being considered an "entry statement".

Ms. Spitz liked the changes that were presented regarding the architecture and advised the applicant to look at the proportions of the arches that are being proposed. She was also concerned with the columns that are being used and are appropriate for this project. For the landscape, Ms. Spitz was concerned that the canopy tree on Admiralty Way may be too small for the proposed location.

Mr. Abelar enjoyed all of the design changes.

Ms. Cloke advised, for the record, that she and Beaches and Harbors staff met with Caruso regarding this project. Ms. Cloke was concerned about the landscape specifics and she addressed the canopy trees for this project. Ms. Cloke questioned if there is room in the façade design to look at the imagery questions of the Marina and use urban design with more energy, which includes the study of arches, awning and openings. Ms. Cloke is in support of the project.

Mr. Moliere asked the applicant if the level of approval received from the Board is adequate to move forward with the project. Mr. Williams advised that the level of approval that has been received is not sufficient for all of the technical reasons regarding financing, construction documents, and getting budgets approved for the project. Mr. Williams advised he would be comfortable with isolating what the specific conditions are and move for an approval of everything at today's meeting, except for the list of issues that need to come back to the Board.

Ms. Cloke advised the applicant that for a higher level of approval complete landscape plans need to be submitted along with a signage package that should include dimensions, locations, colors and lettering fonts.

Mr. Moliere advised that the Board should specifically advise the areas that need to be completed. Mr. Williams was frustrated regarding the conceptual approval that had been given by the Board and advised that he is not clear on what was approved. Ms. Cloke suggested to the applicant to return at the next meeting with dimensioned drawings for a complete approval. Mr. Chesler advised the applicant that the permit approval from the Department does enable the applicant to move forward to Regional Planning with the architectural presentation that is of concern. The permit also lists the conditions that must be completed by the applicant prior to full approval from the Board. Mr. Williams explained in some detail what needs to be approved before this project can move forward. Mr. Williams advised the Board that he is looking for a statement in the permit that reads, "as long as the applicant is in substantial conformance with the conceptual design as it has been presented at today's meeting, with the exception of the additional drawing in details as required by the Board, the applicant can move forward with this project".

**Ms. Cloke (Spitz) moved to approve the proposed project regarding site planning, ~~building, parking and architectural plans~~ in accordance with the materials drawings and renderings submitted to date, with the condition that the applicant return to the Board to discuss the following:**

- 1. Changes recommended for public improvements by the Department of Public Works for vehicular access, circulation, parking and project entries shall be reviewed;**
- 2. The DCB recommends that the County explore the possibility of an opportunity to include Parcel 83 in the proposed project for the purpose of expanding usable public open space in the project;**
- 3. Review lighting with attention to potential impacts concerning night sky lighting and electrical consumption; and**
- 4. Review signage, final landscape plans and final architectural plans.**

**Motion passed unanimously.**

**C. Parcel 56 – Marina del Rey Sportfishing at Fisherman's Village – (DCB #04-002)**

Request for a 60-day extension of the temporary banner.

Ms. Cloke asked if the applicant has met with staff or shown staff any drawings for Fisherman's Village. Ms. Carpenter advised the Board that the applicant has contacted staff and was advised that some of his renderings for the signage may

be too large for the proposed location. Ms. Cloke also advised that the Board and staff received a letter from the lessee, Michael Pashaie, regarding remodeling this parcel, as well as others, and is preparing a comprehensive sign program. Once approved, all new signs will conform to the criteria.

Public Comments

Ms. Pat Younis, Bridge Group, reiterated the applicant's interest to have a sign for his business. She also advised the Board that the areas that are available to post the sign, which are pilings, are inappropriate for the signage and the applicant is working on other possible locations.

Board Comments

Mr. Abelar asked if there are drawing or sketches available for the design concept. Ms. Sorensen advised there is nothing available for the Board to view to date. Ms. Spitz asked if the applicant has started his sign project and will it be completed in 60-days. Ms. Sorensen advised the Board that the applicant is definitely working on his signage and the applicant advised her today that it will be completed in 60-days.

Ms. Cloke asked what staff's recommendations are regarding the signage. Ms. Carpenter advised the Board that the Department recommended APPROVAL of the 60-day temporary permit extension, with the condition that the applicant must make a complete DCB submittal by noon on June 17, 2004, in order to be placed on the June 17, 2004 DCB Agenda.

**Ms. Ignon (Spitz) moved to approved the 60-day extension of the temporary banner with the condition that the applicant return to the Board with a full formal submittal at the June 3, 2004 DCB Meeting. Motion passed unanimously.**

*Ms. Ignon had to leave the meeting at 4:45pm*

*Ms. Cloke asked for a five-minute break – Reconvened at 5:00pm*

**D. Urban Design Guidelines – Public Workshop #3**

Public input on proposed design guidelines for Marina projects

Mr. Chesler gave a brief description of the prior workshops that have taken place and introduced the staff of the Draft Urban Design Guidelines, EDAW. Mr. Chesler also advised that the draft guidelines can be reviewed online or at the public sites located in the Marina. Mr. Chesler advised the Board that Mr. Dave Morgan would not be presenting any items at this meeting, and is only at this meeting to answer any questions or respond to any comments from the Board, public or staff, that require a response.

Public Comments

Tim Riley, Marina del Rey Lessees Association, reminded the Board that Mr. Wisniewski gave all interested, a period of three (3) months to submit comments or questions regarding the Draft Urban Design Guidelines. Mr. Riley also advised staff that he did not see this time specification in the draft April 15, 2004 Minutes from the DCB Meeting.

Donald Klein, President of the Coalition to Save the Marina, submitted a letter from Ms. Carla Andrus regarding the third public workshop with EDAW. Mr. Riley was also advised, by staff, of where he could find copies of the Draft Urban Design Guidelines for public review. Mr. Klein advised the Board of his dissatisfaction regarding this public workshops being held at 2:00pm. He felt the meetings should be included in the Small Craft Harbor Meetings. Staff advised Mr. Klein that he, along with Ms. Andrus, are both on the Department's DCB mailing list, in which the agendas for the DCB Meetings including the design guidelines workshops are announced. Ms. Cloke asked Mr. Morgan to introduce EDAW and himself to Mr. Klein and explain how EDAW was accepted to participate in the Urban Design Project for the Marina.

Mr. Chesler reminded all that the Urban Design Consultant RFP (Request for Proposal) was clearly vented through the Small Craft Harbor Commission in the Marina; the recommendation to the Director was clearly evaluated at two public forums, in all of which were properly agendized for public scrutiny.

Mr. Klein asked about the public response and accomplishments during these first two meetings. Mr. Chesler advised that comments received have not been fully vented, but the Department will do so before the approval of the Urban Design Guidelines. Mr. Chesler also reminded Mr. Klein that today's workshop is a continued opportunity to provide comments. Ms. Cloke informed Mr. Klein that if he had any comments or ideas regarding the Urban Design Guidelines to present in today's meeting the Board would be happy to hear from him. Ms. Carpenter also advised Mr. Riley that at the March 2004 DCB Meeting, EDAW made a full presentation, which included color boards and going over the main points of the Draft Urban Design Guidelines. Mr. Chesler advised Mr. Klein that there would be one or maybe two more workshops regarding the Urban Design Guidelines. Mr. Klein was advised so submit any comments or concerns he has to staff regarding the Urban Design Guidelines.

**4. NEW BUSINESS**

**A. Parcel 125 – Jer-Ne at the Ritz Carlton – (DCB #04-009)**  
Consideration of one (1) sign.

Mr. Steve Landon, manager at the Ritz-Carlton, reiterated points from the report that was given by Ms. Carpenter regarding the proposed signage. Mr. Landon

advised the Board that the sign mirrors the concept of the restaurant and unless you are a guest of the Ritz-Carlton, the restaurant is unknown and hidden. Art Rivas, Tanker Design and Imaging, advised the Board that because the materials needed to make the sign are expensive, they can only be purchased once the sign is approved. Mr. Rivas was only able to bring renderings of the proposed signage. Ms. Cloke suggested a new location for the sign and advised the applicant that if the sign could not be relocated, the dimensions would have to be reduced, which would help to give the sign more visibility. Mr. Rivas expressed his concerns of reducing the sign. Mr. Landon mentioned that placing the sign in the middle of the hotel driveway would probably not be permitted and would increase the budget for the sign.

The matter was held open to give the applicants time to decide whether or not they would agree to reduce the sign dimensions.

Public Comments

None

Mr. Landon advised the Board that he would prefer to keep the sign at the location proposed and keep the height even with the façade (wall) at the location. Mr. Landon advised he would have to check the height of the wall before proceeding.

**Ms. Spitz (Abelar) moved to approve the proposed sign with the change that the top of the sign must be below the coping of the wall. Motion passed unanimously.**

**B. Parcel 56 – Sea Planes, Inc. at Fisherman’s Village – (DCB #04-010)**

Consideration of four (4) signs. The Department recommends APPROVAL of Sign #1 of DCB #04-010, CONTINUATION of Sign #4, pending the master lessee providing and obtaining approval of a comprehensive signage program at Fisherman’s Village, and DENIAL of Signs #2 and #3.

Ron Hoffman, Sea Plane’s Inc., explained his request for signs #2 and #3, which are needed for directional purposes.

Public Comments

None

Board Comments

Mr. Abelar asked the applicant to again explain the locations of the signs. Ms. Sorensen added further explanation of the applicant’s request for signage.

Ms. Cloke suggested an awning sign, stanchion sign, and a sign over the dock gate. Ms Spitz also directed that the applicant use the same letters and fonts for

each sign. Ms. Carpenter advised the applicant that dimensions for the proposed signs would have to be provided to staff before the signs could be posted.

**Ms. Cloke (Spitz) moved to approve, in concept, three signs; 1) awning sign as submitted, 2) scaled version of the awning sign over the gate, and 3) one stanchion sign. Dimensions, actual text, font, style and color must be submitted to Ms. Carpenter and signed off by the Board Chair or Vice-Chair before posting the signs. Motion passed unanimously.**

**E. Approval of DCB Review #04-008 – Parcel 61 – Shanghai Red's**

Approval of the record of the DCB's April 2004 action for a conditioned conceptual approval, subject to identification of the items that have been approved in the past. Item held until the next meeting in which a quorum of commissioners that were present at the April meeting is needed to vote.

For the record, Mr. Chesler clarified that the discussion with the Caruso representatives ~~in the same defense~~ approved DCB Review #04-007 with the modifications that were submitted by the Board. The Board agreed.

**3. Approval of Minutes of March 25, 2004 and April 15, 2004**

Ms. Cloke submitted to staff minor corrections for the Minutes of March 25, 2004 and April 15, 2004. Items were held until the June 2004 meeting for approval.

**5. Staff Reports**

**A. Temporary Permits Issued by the Department**

Mr. Chesler reported that two temporary permits were issued in May 2004, one for temporary tents at the Ritz-Carlton Hotel and the other two (2) for a temporary directional sign, due to the parking lot paving, at The Cheesecake Factory.

**6. Comments From the Public**

None

Mr. Chesler reminded all that the Water Shuttle begins on May 28, 2004. All are invited to enjoy the experience.

Meeting adjourned at 5:37 p.m.

Respectfully Submitted,

*La Trina Hancock-Perry*  
Design Control Board Secretary